


IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE
NINTH CIRCUIT.

F. V. McDONALD,
Plaintiff in Error,
vs.
D. B. AND KATE E. HANNAH,
Defendants in Error.

RECORD.

W. SCOTT BEEBE,
J. C. STALLCUP,
C. R. HOLCOMB,
Attorneys for Plaintiff in Error.



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IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE
NINTH CIRCUIT.

McDONALD,
Plaintiff,

vs.

J. D. HANNAH AND KATE
E. HANNAH,
Defendants.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF WASHINGTON.—WESTERN
DIVISION, FEBRUARY TERM, 1892.

Be it remembered: That on the 21st day of December, 1891, there was duly filed in said Circuit Court of the United States for the District of Washington, Western Division, a complaint in words and figures as follows, to-wit :

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF WASHINGTON.—WESTERN DIVISION.

F. V. McDONALD,	}
<i>Plaintiff,</i>	
<i>vs.</i>	}
DOLPHUS B. HANNAH and	
KATE E. HANNAH,	
<i>Defendants.</i>	

I.

The above named plaintiff, F. V. McDonald, alleges : That he is a citizen of the State of California, and that the defendants are citizens of the State of Washington.

II.

That the plaintiff is owner in fee of, and has a right to, and is entitled to the possession of the real property situated in the City of Tacoma, State of Washington, and described as follows : Commencing fifty-three and one-third ($53\frac{1}{3}$) chains north, and six (6) chains east of the southwest corner of section five (5), in township twenty (20) north of range three (3), east of the Willamette meridian ; thence running east six chains ; thence south six and two-thirds ($6\frac{2}{3}$) chains ; thence west six (6) chains ; thence north six and two-thirds ($6\frac{2}{3}$) chains to the place of beginning.

III.

That the defendants are in the actual possession of said premises and wrongfully withhold the same from the plaintiff. That about the month of December, 1888, while plaintiff was seized in fee of said premises, said defendants unlawfully entered into the possession thereof and still continue to wrongfully withhold the same from the plaintiff.

IV.

That the property described in this complaint and involved in this action exceeds in value the sum of five thousand dollars (\$5000.00.)

V.

Plaintiff asks judgment against defendants

First: For the possession of the property described in this complaint.

Second: For the costs and disbursements of this action.

JOHN C. STALLCUP & W. SCOTT BEEBE,
Attorneys for Plaintiff.

State of Washington, }
County of Pierce. } ss.

I, J. C. Stallcup, being first duly sworn, say, that I am one of the attorneys for the plaintiff herein, and that the foregoing complaint is true as I verily believe, and that I make this verification because the plaintiff is not within this state.

JOHN C. STALLCUP.

Subscribed and sworn to before me this 21st day of December, 1891.

A. REEVES AYRES, [*Seal.*]
U. S. Commissioner.

ENDORSEMENT.

No. 113. Law. F. V. McDonald *vs.* Dolphus B. Hannah and Kate E. Hannah. Complaint. Filed December 21, 1891. A. Reeves Ayers, clerk. W. Scott Beebe and J. C. Stallcup for plaintiff.

And, afterwards, to-wit: On the 21st day of December, 1891, there was duly issued out of said court, a summons in words and figures as follows, to-wit:

UNITED STATES OF AMERICA.

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH JUDICIAL CIRCUIT, DISTRICT OF WASHINGTON.—WESTERN DIVISION.

F. V. McDONALD,
Plaintiff,
vs.
DOLPHUS B. HANNAH and
KATE E. HANNAH,
Defendants.

Action brought in the said Circuit Court, and the complaint filed in the office of the Clerk of said Circuit Court, in the City of Tacoma, Pierce county, State of Washington.

*The President of the United States of America, greeting:
To Dolphus B. Hannah and Kate E. Hannah:*

You are hereby required to appear in the Circuit Court of the United States, Ninth Judicial Circuit, District of

Washington, Western Division, at the City of Tacoma, within twenty days after the service of this summons upon you, if served in said County of Pierce; or, if served in any other county, then within thirty days after the day of service, and answer the complaint of the above named plaintiff, now on file in the office of the clerk of said court, a copy of which complaint is herewith delivered to you. And unless you so appear and answer, the plaintiff will apply to the court for the relief demanded in said complaint.

Witness, the Honorable Melville W. Fuller, chief justice of the supreme court of the United States, and the seal of said circuit court, this 21st day [Seal.] of December, in the year of our Lord one thousand, eight hundred and ninety-one, and of our Independence the 116th.

A. REEVES AYRES, *Clerk.*

UNITED STATES MARSHAL'S OFFICE, }
DISTRICT OF WASHINGTON. }

I hereby certify that I received the within writ on the 21st day of December, 1891, and personally served the same on the 21st day of December, 1891, by delivering to and leaving with Dolphus B. Hannah and Kate E. Hannah, said defendants named therein personally, at Tacoma, County of Pierce, in said district, a certified copy thereof, together with a copy of the complaint, certified to by A. Reeves Ayres, and attached thereto.

December 22, 1891.

THOS. R. BROWN, *U. S. Marshal.*

By D. G. LOVELL, *Deputy.*

MARSHAL'S FEES.

To service two summons and complaint	\$8 00
To milage, two miles, at 12c. per mile	24
	<hr/>
	\$8 24

ENDORSEMENT.

No. 113. U. S. Circuit Court, Ninth Circuit, District of Washington, Western Division. F. V. McDonald, *vs.* D. B. Hannah, *et ux.* Original summons. W. Scott Beebe, John C. Stalleup, plaintiff's attorney. Filed December 23, 1891. A. Reeves Ayers, clerk.

And, afterwards, to wit: on the 19th day of January, 1892, there was duly filed in said court in said cause an answer to the complaint in the words and figures as follows, to-wit :

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH
JUDICIAL CIRCUIT, DISTRICT OF WASHINGTON.—WESTERN DIVISION.

F. V. McDONALD,	} Plaintiff,	No. Answer.
<i>vs.</i>		
DOLPHUS B. HANNAH and	} Defendants.	
KATE E. HANNAH,		

Come now the above named Dolphus B. Hannah and Kate E. Hannah, and for answer to the complaint of the plaintiff herein, they allege as follows :

I.

They deny each and every allegation contained in paragraph second of said complaint.

II.

They admit that they are in the actual possession of said premises, but deny that they wrongfully withhold the same from plaintiff.

III.

They deny that they wrongfully entered into the possession of said premises, and deny that they wrongfully withheld the same from plaintiff.

And for further answer and defense these defendants allege :

I.

That on the 5th day of November, A. D. 1881, all and singular the premises described in plaintiff's complaint were within the limits established by an act of the legislative assembly of the Territory of Washington, approved November 5th, 1881, entitled : "An act to confer a city government upon New Tacoma," as the corporate limits of

New Tacoma ; and that under and by virtue of said act of said legislative assembly, the City of New Tacoma was duly incorporated.

II.

That under the provisions of section thirty-four of said act, the city government of New Tacoma had power and authority to assess, levy and collect taxes for general municipal purposes upon all property, both real and personal, situate within the corporate limits, which was by law taxable for territorial and county purposes.

III.

That in the year A. D. 1882, there was duly levied and assessed by the city government of New Tacoma a tax upon all the real estate within the limits of said city, including the premises described in the complaint herein, for general municipal purposes. That the said premises, being so, as aforesaid, within the corporate limits of New Tacoma, were by law taxable for territorial and county purposes, and that one Mary A. Givens, was then and there the record owner, and also the owner in fact, of said premises.

IV.

That in the year A. D. 1882, there was duly levied and assessed by the city government of New Tacoma, a tax upon all the real estate within the limits of said city, including the premises described in plaintiff's complaint, for general municipal purposes, and that all and singular the said premises were duly assessed to said Mary A. Givens, for said year.

V.

That under section sixty-two of said act incorporating New Tacoma, it is provided that the council of said corporation must provide by ordinance within what time all municipal taxes, whether general or special, must be paid to the treasurer, and when the taxes not so paid, become delinquent; also fixing the time when the tax roll must be returned to the council.

VI.

That in pursuance of the provisions of said section sixty-two the council of said corporation did provide by

ordinance that all municipal taxes must be paid to the treasurer by the 31st day of December, 1882, and that all taxes not so paid should be delinquent; which said ordinance was duly passed the 24th day of October, 1882.

VII.

That said premises be so, as aforesaid, assessed to the said Mary A. Givens.

VIII.

That thereafter the city council of said city ordered the clerk of said city to deliver to the tax collector of delinquent taxes, (the sheriff of the county) the tax roll of 1882, upon which the said property, described in the complaint herein, was so assessed to the said Mary A. Givens, as aforesaid, and caused to be attached thereto a warrant to the said sheriff of Pierce county, authorizing the said sheriff to collect all delinquent taxes, as provided by law, and in accordance with the provisions of sections sixty-three of said city's charter, and section twenty-nine hundred and three, of chapter twenty-five of the Code of Washington.

IX.

That in pursuance of the directions and instructions, so given by said city council, the clerk of said city did, on the 23d day of January, 1883, deliver to the sheriff of Pierce county the duplicate assessment roll, containing a list of all persons and property owing taxes in and to the said City of Tacoma, together with the costs and charges thereon, which said duplicate city assessment roll did then and there include the property described in the complaint, herein the same being assessed thereon for the year ending December 31, 1882, for said municipal taxes, to the said Mary A. Givens.

X.

That on the 2d day of April, 1883, the said sheriff of Pierce county entered in the duplicate assessment roll, immediately following his supplemental assessment, the affidavit required by section twenty-nine hundred and fifty of the Code of Washington territory, to the effect that after due and diligent search no personal property could be found to pay the taxes assessed against the persons

and property described in said duplicate assessment roll remaining unpaid, and that the taxes due from said Mary A. Givens, assessed on the land described in plaintiff's complaint, had not been paid, and that the same then and there appeared on said duplicate assessment roll as delinquent and wholly unpaid; that the said taxes, so due from said Mary A. Givens and assessed on said land, were then delinquent and unpaid, and that no personal property could be found belonging to said Mary A. Givens out of which said tax could be made. That under the provisions of section twenty-nine hundred and sixteen of the Code of Washington territory the said sheriff gave public notice of the sale of the real property, described in said delinquent list, for the total amount of taxes then due thereon, including printing, interest and costs to date of sale, by publishing for three successive weeks, immediately prior to the first Monday in May, 1883, the said delinquent list, in the manner provided by law, in New Tacoma, Pierce county.

XI.

That said delinquent list contained a notification that all real estate, described thereon, on which the taxes of the preceding year, to-wit: The year 1882, had not been paid would be sold at public auction to satisfy the taxes, penalty, interest and costs due the city from the owners thereof for said year at New Tacoma, in front of the court house door, in said county and territory; that said sale would commence on the first Monday in May and continue until said real estate was sold, as required by law, which notice, so published as aforesaid, contained a description of all the property to be sold, and the names of the persons to whom said property was assessed; and that the said delinquent list, so published as aforesaid, contained a description of the property described in plaintiff's complaint, assessed to the said Mary A. Givens.

XII.

That in pursuance of said notice, so published and given as aforesaid, the said sheriff did, on the 7th day of May, 1883, offer the said tract of land, described in plaintiff's complaint, for sale between the hours of ten o'clock A. M. and three o'clock P. M., of that day, to pay said taxes and charges due thereon, at public auction in front of the

court house door in said New Tacoma ; that at said sale D. B. Hannah, one of the defendants herein, was the bidder who was willing to take the least quantity of, or the smallest portion of the interest of said land, and pay the taxes, costs and charges due thereon, including one dollar for the certificate of sale, which amounted to the sum of four and 78-100 dollars.

XIII.

That at said sale the said D. B. Hannah purchased the same, and then and there paid the full amount of said taxes, costs and charges, and that thereupon the treasurer of said County of Pierce delivered to said D. B. Hannah the usual certificate of sale; and the said D. B. Hannah thereby became the purchaser of the land described in plaintiff's complaint, so sold for taxes as aforesaid. That the said tract was sold subject to redemption, pursuant to the statutes in such cases provided, but that no person redeemed said property from said sale, and no redemption was ever made thereof.

XIV.

That on the 2d day of April, 1886, the said D. B. Hannah duly assigned said certificate of sale, and all his rights thereunder, to one W. B. Kelly, as appears from said certificate of sale, and the assignment thereof.

XV.

That on the 16th day of September, 1886, one Lewis Byrd, then being the sheriff of said County of Pierce, Territory of Washington, by virtue and in pursuance of the statutes in such cases made and provided, did, as such sheriff, in the name of the Territory of Washington, execute and deliver to said W. B. Kelly a deed conveying to said W. B. Kelly, his heirs and assigns forever, all and singular the premises described in plaintiff's complaint, in the manner and form provided by law.

XVI.

That the said deed, so as aforesaid made, executed and delivered by said sheriff to said W. B. Kelly, was duly recorded in the auditor's office of said Pierce county, Washington territory, on the 9th day of October, 1886, in book nineteen of deeds, at pages 706 *et seq.*

XVII.

That thereafter and on the 1st day of March, 1887, said W. B. Kelly and Mary M. Kelly, his wife, for and in consideration of the sum of one thousand dollars, conveyed to the defendant, Dolphus B. Hannah, by warranty deed, all and singular the premises described in plaintiff's said complaint, since which time defendants have been in the open, notorious and exclusive possession of said premises, and have made permanent improvements thereon, costing five thousand dollars.

XVIII.

And these defendants further say that plaintiff's right to maintain his action to recover the premises described in his complaint herein, so as aforesaid sold for taxes, is barred by the provisions of section twenty-nine hundred and thirty-nine of the Code of Washington, which provides that all suits for the recovery of lands sold for taxes must be commenced three years from the date of the recording of the tax deed.

WHEREFORE: These defendants pray judgment against the plaintiff to be dismissed hence without day, and for their costs and disbursements, herein.

JUDSON & SHARPSTEIN,
Attorneys for Defendants.

State of Washington, }
County of Pierce. } ss.

D. B. Hannah being duly sworn, on oath said: That he is the defendant in the above action; that he has read the foregoing answer, and knows the contents thereof, and that he believes it to be true.

D. B. HANNAH.

Subscribed and sworn to before me this 11th day of January, 1892.

J. A. WINTERMUTE,
[Seal.] *Notary Public, residing at Tacoma, Pierce county, Washington.*

ENDORSEMENT.

No In the U. S. Circuit Court of the District of Washington, Western Division. F. V. McDonald, plaintiff, vs. D. B. Hannah, *et als*, defendants. Answer. Service by receipt of a copy, admitted at Tacoma, this 9th day of January, A. D. 1892. J. C. Stallcup, attorney for plaintiff. Filed January 19, 1892. A. Reeves Ayres, clerk. Judson & Sharpstein, attorneys for defendants, Hannah.

And, afterwards, to-wit : On the 1st day of February, 1892, there was duly filed in said court, in said cause, a reply to the answer in the words and figures as follows, to-wit :

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF WASHINGTON.—WESTERN DIVISION.

F. V. McDONALD, <i>Plaintiff,</i>	}	
<i>vs.</i>		
DOLPHUS B. HANNAH and KATE E. HANNAH, <i>Defendants.</i>	}	Reply.

Now comes the plaintiff, and replying to the affirmative matter in the said further answer and defense in the answer of the said defendant's herein, admits that the said premises described in the plaintiff's complaint, were within the corporate limits of the said Tacoma ; that in the said year A. D. 1882, they were, by law, taxable for territorial and county purposes ; and that one Mary A. Givens was then and there the record and real owner thereof ; but this plaintiff is informed, and believes, and accordingly alleges, that the things in said complaint alleged to have been done, were not done ; and denies the allegations of said complaint, contained in the 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th and 18th paragraphs thereof, excepting the allegations in the said 3d paragraph above expressly admitted. And plaintiff is informed and believes, and so alleges, that without right, did the defendants pretend to have a tax deed of said premises, and well knowing that they had no right to the said premises, by virtue of said pretended tax deed, nor otherwise, took forcible possession of the said premises

described, and erected thereon a temporary dwelling place, for the purpose of enabling them to forcibly hold said premises against the plaintiff, and of little or no permanent value to the said premises, and of a cost less than fifteen hundred dollars.

W. SCOTT BEEBE and
JNO. C. STALLCUP,
Plaintiff's Attorneys.

State of Washington, }
County of Pierce, } *ss.*

John C. Stallcup, on his oath says: That he is one of the attorneys for the said plaintiff in the said action, duly authorized in the premises; that the said plaintiff is a non-resident of said State of Washington, and is now absent from said state; that he has read over the foregoing reply of the said plaintiff; that the same is true according to his best knowledge and belief.

JOHN C. STALLCUP.

Sworn to and subscribed by said John C. Stallcup, before me this 1st day of February, A. D. 1882.

[Seal]

EDWARD PHILLIPS,
Notary Public residing at Tacoma, Wash

Received copy of the foregoing reply, this first day of February, A. D. 1892.

JUDSON & SHARPSTEIN,
Attorneys for Defendants.

ENDORSEMENT.

F. V. McDonald *vs.* Dolphus Hannah and Kate Hannah.
Reply. Filed February 1, 1892. A. Reeves Ayres, clerk.
W. Scott Beebe and John C. Stallcup for plaintiff.

And, afterwards, to-wit: On Monday, the 8th day of February, 1892, the same being the fifth judicial day of the regular February term of said court, present the Honorable Cornelius H. Hanford, United States district judge, presiding, the following proceedings were had in said cause, to-wit:

F. V. McDONALD, }
Plaintiff, }
vs. }
DOLPHUS B. HANNAH and }
KATE E. HANNAH, }
Defendants. }

Now, on this 8th day of February, 1892, upon application of Judson & Sharpstein, solicitors for the defendants, plaintiff's counsel consenting thereto.

IT IS ORDERED that the defendants may have leave to file an amended answer herein within one day from this date.

And afterwards, to-wit : On the eighth day of February, 1892, there was duly filed in said court in said cause an amended answer in the words and figures as follows, to-wit :

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH
JUDICIAL CIRCUIT, DISTRICT OF WASH-
INGTON.—WESTERN DIVISION.

F. V. McDONALD, <i>Plaintiff,</i>	}	Amended Answer.
<i>vs.</i>		
DOLPHUS B. HANNAH and KATE E. HANNAH, <i>Defendants.</i>		

Come now the above-named defendants, and, by leave of court first obtained, filed this, their amended answer, to the complaint of the plaintiff herein, and answering said complaint.

I.

Deny each and every allegation contained in the second paragraph of said complaint.

II.

Admit that they are in the actual possession of the premises described in plaintiff's said complaint, but deny that they wrongfully withhold the same from said plaintiff.

III.

They deny that plaintiff was ever seized of the premises described in said complaint, and deny that they wrongfully entered into possession of said premises, and deny that they wrongfully withhold the same from plaintiff.

And for a further answer and defense these defendants allege :

I.

That at all times herein mentioned, all and singular the premises described in plaintiff's complaint, were within the

limits established by an act of the legislative assembly of the Territory of Washington, approved November 5th, 1881, and entitled, "An Act to confer a City Government upon New Tacoma," as the corporate limits of "New Tacoma;" and that under and by virtue of said act of said legislative assembly the City of "New Tacoma" was duly incorporated.

II.

That under the provisions of sub-division 1 of section 34 of said act the city government of "New Tacoma" had the power and authority to assess, levy and collect taxes for general municipal purposes upon all property, real and personal, within the corporate limits of said city, which were, by law, taxable for territorial and county purposes, and by section 50 of said act it is provided that the assessment of property must be made in the manner prescribed by law for assessing property for territorial and county purposes. That the time of making such assessment, and the return thereof, and for applying to the council for the revision thereof, must be prescribed by ordinance, and that in accordance with the provisions of said act said city council did enact an ordinance, entitled: "Ordinance No. 58, to Prescribe the Time and Manner of Making the Annual Assessment of Taxable Property in the City of New Tacoma," passed and approved June 23d, 1882, which said ordinance provided that the time for making the annual assessment for the year 1882, should commence on the 31st day of May, and end on the 15th day of July of said year; that the assessor should make due return of his assessment roll to the city clerk on or before the 25th day of July of said year; that the said city council should meet on the 31st day of July of said year, at 7:30 p. m., to sit as a board of equalization for the revising of said roll, and should continue in session until the revision of the same was completed, and that due notice of the meeting of said board should be given in a newspaper, published and of general circulation, in said city.

III.

That the premises described in plaintiff's complaint were within the corporate limits of said City of New Tacoma, and were by law taxable for the territorial and county purposes.

IV.

That in the year A. D. 1882, there was duly levied and assessed by said city government of New Tacoma, a tax upon all the real estate within the corporate limits of said city, including the premises described in plaintiff's complaint, for general municipal purposes, and that all and singular the said premises were duly assessed to one Mary A. Givens for said year.

V.

That under the provisions of section 62, of said act it is provided that the council of said "New Tacoma" must provide by ordinance within what time all municipal taxes must be paid to the treasurer and that the tax not so paid shall become delinquent. Also fixing the time when the tax roll must be returned to the city council.

VI.

That in pursuance of the provisions of said section 62 the council of said City of "New Tacoma" did provide by ordinance that all municipal taxes should be paid to the treasurer of said city on or before the 31st day of December, 1882, and that all taxes not paid at that time shall be delinquent, which said ordinance was duly passed the 24th day of October, 1882, and is entitled: "An Ordinance Levying the Annual Tax for General Municipal Purposes for the Year A. D. 1882."

VII.

That taxes amounting to the sum of three dollars, were levied and assessed against the premises described in said complaint, but that the same were not paid within the time prescribed by said ordinance; and thereafter the city council of said city ordered the clerk of said city to deliver to the sheriff of the County of Pierce, Territory of Washington, he being the collector of delinquent taxes of said City of "New Tacoma," said tax roll of 1882, upon which the said property described in the complaint herein, was so assessed to the said Mary A. Givens, as aforesaid, and caused to be attached thereto a warrant directed to the said sheriff of Pierce county, authorizing said sheriff of Pierce county to collect all the delinquent taxes, as provided by law, and in

accordance with the provisions of section 63 of said act of the legislature and the provisions of section 2903 of chapter 225 of the Code of Washington territory of 1881.

VIII.

That in pursuance of the directions and instructions so given by the said city council as aforesaid, the clerk of said city did, on the 23d day of January, 1883, deliver to the said sheriff of Pierce county the duplicate assessment roll of said city containing a list of all persons and property owing taxes in and to the said City of "New Tacoma," together with the costs and charges thereon, which said duplicate city assessment roll did then and there include the property described in the complaint herein, the same being assessed thereon for the year ending December 31, 1882, for said municipal taxes, to the said Mary A. Givens.

IX.

That on the 2d day of April, 1883, the said sheriff of Pierce county, as collector of the delinquent taxes of said city, entered in the said duplicate assessment roll, immediately following his supplemental assessment, the affidavit required by section 2915 of the Code of Washington territory, to the effect that after due and diligent search no personal property could be found to pay the taxes assessed against the persons and property described in said duplicate assessment roll remaining unpaid.

X.

That the taxes due to the city from the said Mary A. Givens, assessed on the land described in plaintiff's complaint, were not paid, and the same then and there appeared on said duplicate assessment roll as delinquent and wholly unpaid.

XI.

That under the provisions of section 2916, of the Code of Washington territory, of 1881, the said sheriff gave public notice of the sale of the real property described in said delinquent list for the total amounts of taxes due thereon, including the printing, interest and costs to date of sale, by publishing the same for three successive weeks

immediately prior to the first Monday in May, 1883, in the official paper of said county, said paper being published in said City of New Tacoma, in the manner provided by law.

XII.

That said delinquent list contained a notification that all real estate, described thereon, on which the taxes for the preceding year, to-wit: the year 1882, had not been paid, would be sold at public auction to satisfy the taxes, penalty, interest, costs and charges due to the city from the owners thereof for said year, at "New Tacoma," in front of the court house door, of the County of Pierce, and Territory of Washington; that said sale would commence on the first Monday of May, 1883, and continue until said real estate was sold, as required by law, which notice, so published as aforesaid, contained a description of all of the property to be sold and the names of the persons to whom said property was assessed; and that the said delinquent list, so published as aforesaid, contained a description of the property described in plaintiff's complaint, assessed to the said Mary A. Givens.

XIII.

That in pursuance of said notice, so published and given as aforesaid, the said sheriff did, on the 7th day of May, 1883, said day being the first Monday of May, of the said year 1883, offer the said tract of land described in plaintiff's said complaint, for sale between the hours of ten o'clock A. M. and three o'clock P. M., of said day, to pay said taxes and charges due thereon, at public auction in front of the court house door in said "New Tacoma," and that at said sale D. B. Hannah, one of the defendants herein, was the bidder who was willing to take the least quantity of, or the smallest portion of the interest in said land, and pay the taxes, costs and charges due thereon, including one dollar for the certificate of sale, in all amounting to the sum of four dollars and seventy-eight cents (\$4.78.)

XIV.

That at said sale the said D. B. Hannah purchased the said premises, and then and there paid the full amount of

said taxes, costs and charges due thereon, and that thereupon the treasurer of said County of Pierce delivered to said D. B. Hannah the usual certificate of sale, and by virtue thereof the said D. B. Hannah became the purchaser of the land described in plaintiff's complaint, so sold for taxes as aforesaid.

XV.

That on the 2d day of April, 1886, the said D. B. Hannah duly assigned the said certificate of sale, and all his rights thereunder, to one W. B. Kelly.

XVI.

That said premises were not redeemed by any person within the time limited by law, and that thereafter and on the 16th day of September, 1886, one Lewis Byrd, then being the sheriff of the County of Pierce, Territory of Washington, by virtue and in pursuance of the statutes, did, as such sheriff, in the name of the Territory of Washington, execute and deliver to the said W. B. Kelly, in the manner and form provided by law, a deed conveying to the said W. B. Kelly, his heirs and assigns forever, all and singular the premises described in plaintiff's complaint.

XVII.

That said deed, so as aforesaid made, executed and delivered by said sheriff to the said W. B. Kelly, was duly recorded in the office of the auditor of said Pierce county, Washington territory, on the 9th day of October, 1886, in volume 19 of deeds, at pages 706, 707 and 708.

XVIII.

That thereafter and on the 1st day of March, 1887, said W. B. Kelly and Mary M. Kelly, his wife conveyed to the defendant, Dolphus B. Hannah, by warranty deed, all and singular the premises described in plaintiff's complaint, since which time defendants have been in the open, notorious and exclusive possession of said premises, and have made permanent improvements thereon costing five thousand dollars.

And for a further answer and defense, and by way of bar to the maintenance of this action, defendants allege:

That plaintiff is barred of his right to maintain this action by the provisions of section 2939 of the Code of Washington territory of the year 1881, which said section provides that any suit or proceeding for the recovery of land sold for taxes, except in cases where the taxes have been paid on the land redeemed as provided by law, shall be commenced within three years from the time of recording tax deed of sale.

Wherefore, defendants pray judgment against plaintiff to be dismissed hence without day; that plaintiff's action be dismissed, and that defendants do have and recover their costs and disbursements herein.

JUDSON & SHARPSTEIN,
Attorneys for Defendants.

State of Washington, }
County of Pierce. } ss.

D. B. Hannah being duly sworn, on oath says: That he is one of the defendants in the above action; that he has read the foregoing amended answer, and knows the contents thereof, and that he believes it to be true.

D. B. HANNAH.

Subscribed and sworn to before me this 8th day of February, 1892.

W. C. SHARPSTEIN, *Notary Public.*

ENDORSEMENT.

No. In the U. S. Circuit Court of the District of Washington, Western Division. F. V. McDonald, plaintiff, vs. Dolphus B. Hannah and Kate E. Hannah, defendants. Amended answer. Service by receipt of a copy, admitted at Tacoma this 8th day of February, A. D. 1892. _____ attorney for plaintiff. Received copy this 8th February, 1892. J. C. Stalleup, for plaintiff. Filed February 9, 1892. A. Reeves Ayres, clerk. Judson & Sharpstein, attorneys for defendants.

And, afterwards, to-wit : On the 15th day of February, 1892, there was duly filed in said court in said cause, a reply to the amended answer in the words and figures as follows, to-wit :

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.—WESTERN DIVISION.

F. V. McDONALD, <i>Plaintiff,</i>	}	
<i>vs.</i>		
DOLPHUS B. HANNAH and KATE E. HANNAH, <i>Defendants.</i>	}	Reply.

Now comes the plaintiff, and replying to the affirmative matter in the said further answer and defenses in the amended answer of the said defendants herein, admits that the said premises described in the plaintiff's complaint were within the corporate limits of the said Tacoma ; that in the said year, A. D. 1882, they were by law taxable for territorial and county purposes ; and that one Mary A. Givens was then and there the record and real owner thereof ; but this plaintiff is informed and believes, and accordingly alleges, that the things in said further answer and defenses alleged to have been done, were not done, and denies all of the allegations of said answer. And plaintiff is informed and believes, and so alleges, that without right did the defendants wrongfully pretend to have a tax deed of said premises, while in truth and fact they had no deed conveying any interest whatever in said premises described, and well knowing that they had no right to the said premises by virtue of said pretended tax deed, nor otherwise, took forcible possession of the said premises described, and erected thereon a temporary dwelling place for the purpose of enabling them to forcibly hold said premises against the plaintiff, and of little or no permanent value to the said premises, and of a cost less than fifteen hundred dollars.

And replying further to the said answer and defenses set up in said answer of defendants, this plaintiff denies the allegations thereof, and is informed and believes, and so specifically alleges, that the said premises described in the complaint and in the said pretended tax deed referred

to in said answer, were not assessed for city taxes, nor were they subject to sale for city taxes, for the years 1881, 1882 and 1883; that they were not assessed for city taxes for nor during either of the said years; that they were not advertised for sale for taxes at all for either of said years, nor were they at all advertised for sale for taxes on the 7th day of May, A. D. 1883, nor for any other day of that year, or any other year; that they were never advertised for, nor sold for taxes of any kind whatever; that all the taxes assessed against the said premises for the years 1881, 1882 and 1883 were duly paid; that the said pretended tax deed referred to in the said answer of said defendants was never recorded, as provided by law; that the description of the said premises claimed by defendants under said pretended tax deed, never appeared in the index to the record of said deed; that no notice, by record or otherwise, was ever given of any claim against said premises by virtue of any tax sale whatever.

Wherefore plaintiff prays recovery, as in his complaint set forth.

W. SCOTT BEEBE and

JOHN C. STALLCUP,

Attorneys for Plaintiff.

State of Washington, }
County of Pierce. } ss.

John C. Stallcup, on his oath says: That he is one of the attorneys for the said plaintiff in the said action, duly authorized in the premises; that the said plaintiff is a non-resident of the State of Washington, and is now absent from said state. That he has read over the foregoing reply of the said plaintiff; that the same is true according to his best knowledge and belief.

JOHN C. STALLCUP.

Sworn to and subscribed by said John C. Stallcup before me, this 15th day of February, A. D. 1892.

EDWARD PHILLIPS.

[Seal.] *Notary Public for the State of Washington, residing at Tacoma, Pierce county.*

Received copy of the foregoing reply this 15th day of February, 1892.

.....
Attorneys for Defendants.

ENDORSEMENT.

No Law. F. V. McDonald *vs.* Dolphus B. Hannah *et al.* Reply. W. Scott Beebe and John C. Stallcup, for plaintiffs. Filed February 15, 1892. A. Reeves Ayers, clerk.

And, afterwards, to-wit: On the 18th day of February, 1892, there was duly filed in said court, in said cause, a stipulation waiving a jury in the words and figures as follows, to-wit:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.—WESTERN DIVISION.

F. V. McDONALD,	}
<i>Plaintiff,</i>	
<i>vs.</i>	}
DOLPHUS B. HANNAH and	
KATE E. HANNAH,	
<i>Defendants.</i>	

STIPULATION.

It is hereby stipulated between the parties to this action by their respective attorneys, that a trial hereof by a jury is hereby waived, and that the case shall be tried by the court and without the intervention of a jury.

W. SCOTT BEEBE,
J. C. STALLCUP,
Attorneys for Plaintiff.

JUDSON & SHARPSTEIN,
Attorneys for Defendant.

ENDORSEMENT.

McDonald *vs.* Hannah. Stipulation to waive jury. Filed February 18, 1892. A. Reeves Ayres, clerk.

And, afterwards, to-wit: On the 18th day of February, 1892, there was duly filed in said court, in said cause, a stipulation in the words and figures as follows, to-wit:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF WASHINGTON.

<p>F. V. McDONALD, <i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>DOLPHUS B. HANNAH and KATE E. HANNAH, <i>Defendants.</i></p>	}	Stipulation.
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It is agreed that defendants have leave to file their amended answer in this case, that plaintiff file his replication thereto at any time before the day set for trial.

That the abstract of title ordered and furnished in the case of F. V. McDonald *vs.* John Donaldson *et al* pending in this court may be referred to as evidence in this case, in so far as it shows conveyances affecting the title to the land described in plaintiff's complaint herein, and that either party may have privilege of filing in evidence a certified copy from the records of any instrument referred to in said abstract that may be deemed as material evidence upon the trial of this case; that the abstract reference thereto may be used upon the trial in lieu of the instrument for convenience. It being understood that the party using said abstract shall specify such instruments contained therein as he may designate as his chain of title, and that the instruments so designated, and no others, shall be considered by the court, subject to such objections to their introduction as might be made in case the original instruments, or certified copies thereof, had been first offered, and that the said entries in said abstract shall be replaced by certified copies as soon as practicable. This stipulation and arrangement is made for convenience only.

JOHN C. STALLCUP,
JUDSON & SHARPSTEIN,
Attorneys for Defendants.

ENDORSEMENT.

F. V. McDonald *vs.* Hannah. Stipulation. Filed February 18, 1892. A. Reeves Ayers, clerk.

And, afterwards, to-wit: On Thursday, the 18th day of February, 1892, the same being the fourteenth judicial day of the regular February term of said court,

present the Honorable Cornelius H. Hanford, United States district judge, presiding, the following proceedings were had in said cause, to-wit :

F. V. McDONALD,	}	<i>Plaintiff,</i>
<i>vs.</i>		
D. B. HANNAH and KATE E.	}	<i>Defendants.</i>
HANNAH,		

Now, on this day, this cause came on for hearing and the same was argued by counsel till the hour of adjournment.

And, afterwards, to-wit: On Friday, the 19th day of February, 1892, the same being the fifteenth judicial day of the regular February term of said court; present the Honorable Cornelius H. Hanford, United States district judge, presiding, the following proceedings were had in said cause, to-wit :

F. V. McDONALD,	}	<i>Plaintiff,</i>
<i>vs.</i>		
D. B. HANNAH and KATE	}	<i>Defendants.</i>
E. HANNAH,		

Now, on this day, this cause again coming on to be heard, the same proceeded by hearing the arguments of counsel, and the cause was thereupon taken under advisement by the court.

And, afterwards, to-wit : On the 22d day of June, 1892, there was duly filed in said court, in said cause, the opinion of the court in the words and figures as follows, to-wit :

UNITED STATES CIRCUIT COURT, DISTRICT OF WASHINGTON.
—WESTERN DIVISION.

F. V. McDONALD,	}
<i>vs.</i>	
D. B. HANNAH and WIFE.	}

At law : action to recover possession of real estate ; jury waived ; findings and judgment for the defendants.

W. SCOTT BEEBE and
J. C. STALLCUP,
For Plaintiff.
JUDSON & SHARPSTEIN,
For Defendants.

Hanford, J.—The plaintiff claims title by virtue of a quit-claim deed to him from one Mary A. Givens. The defendants entered and were in actual possession of the demanded premises for a period of more than four years before the commencement of the action, claiming title thereto by virtue of a tax deed executed by the sheriff of Pierce county, pursuant to a sale of the property for delinquent taxes assessed against the plaintiff's grantor, Mary A. Givens. In their answer the defendants deny that the plaintiff has any title or right to the possession of the property, therefore, before any question affecting their rights can, with propriety, be considered, the plaintiff must prove his title, for, unless he can show a *prima facie* right of possession, it is mere impertinence on his part to question the rightfulness of the defendants' actual possession. The evidence does not show that the title to the property was ever vested in Mary A. Givens, but inasmuch as in their answer the defendants claim title to the property under a conveyance pursuant to a sale for delinquent taxes of said Mary A. Givens, it is urged in behalf of the plaintiff that the parties claim title from a common source; that the defendants cannot, without utterly destroying their own claim, successfully impeach the title of the plaintiff's grantor, and that proof of her title is, therefore, unnecessary.

Where the revenue laws of a state provide for the taxation of land and proceedings *in rem* against the property assessed for the collection of the tax levied upon it, without imposing any personal liability upon the owner, the purchaser at a tax sale acquires an original and independent title created by law, but, the system of taxation provided by the laws of Washington territory, under which the defendant's tax deed was executed, is quite different. Said laws require the listing of property for taxation upon an assessment role in a prescribed form containing the names of all known owners of property, real and personal, and provide that lands must be assessed in the names of the owners, if known; taxes when levied constitute a debt due from the owner, and the same may be collected by distraint, and lands are not subject to sale for delinquent taxes, except in the event of failure on the part of the owner to pay the tax, and of the tax collector to find personal property of the owner sufficient to produce the amount due. Under such

a system the title conveyed by a tax deed is derivative as in the case of a sale under judicial process. The revenue officers making the sale and tax deed are clothed with legal authority to convey the title of the delinquent owner, and only such title as he has passed to the grantee by the tax deed. Black on Tax Titles, sections 232-233. While I agree with counsel for the plaintiff as to the abstract legal proposition, it is impossible for me to give them the benefit of it in this case, as I would do if there were no evidence in the case in regard to Mary A. Givens' title. The parties have introduced an abstract of the record, showing the facts in regard to her claim of title, by which it affirmatively appears that no title was ever vested in her. This evidence is in the case, and in the light thereof the court cannot blindly presume, contrary to the facts, that she has made a valid conveyance of title to the premises, there being no basis for such presumption, other than a mere rule of practice, under which, for convenience, if the parties had seen fit to rely upon it, proof of her title might have been dispensed with. The land in controversy is part of the tract involved in the case of *F. V. McDonald vs. John Donaldson, et al.*, recently determined in this court. 47 Fed. Rep. 765. The husband of Mary A. Givens, with other persons, acquired the title to said tract as tenants in common, and by transactions between themselves, and a succession of untoward occurrences, as shown by the published statement and opinion of the court in that case, the title became snarled, one of the most serious complications being caused by the death of Givens, which occurred in the year 1873. Being non-residents, the statutes of the territory in relation to the property rights of married persons, enacted prior to his death, were inapplicable to Mr. and Mrs. Givens, and conferred no rights upon the widow; neither was she, by the laws then in force, entitled to take any part of her husband's real estate by inheritance. The partition deed made to her by Matthews as attorney in fact, was void, for the reason that, by the death of her husband, the power of attorney under which Matthews acted was annulled. She had a right of dower and nothing more; but the demanded premises have not been awarded to her in any proceeding, according to the statute for assignment of dower, therefore, her grantees acquired no title or right of possession by the deed from her, even if the execution, delivery and validity thereof be assured.

The record in the partition suit of *McDonald vs. Donaldson, et al.* above referred to, was offered in evidence and the same is now relied upon by the plaintiff who claims that by the judicial determination of this court his title to the premises has been established. The defendants objected to the introduction of this record, claiming that the same is incompetent and immaterial, for the reason that as they were not parties to the suit they cannot be bound by the determination. The decree is equivalent to a quit-claim deed to the plaintiff from all the other parties to the partition suit of their respective interests in the demanded premises, and is, therefore, a connecting link in the chain of title, and is competent evidence for the plaintiff, just as conveyances of title from the respective owners of undivided interests made without knowledge of, or privity with the defendants, would be competent. I, therefore, overrule the defendants' said objection. The defendants are not, however, concluded by said decree, nor can they be denied their day in court to put in issue the validity of plaintiff's pretended right to the demanded premises, and subject the same to the test of a judicial determination.

Neither the defendants, nor the heirs, or legal representatives of Givens were in court as parties to the partition suit, and by the course pursued by those who were parties, the court was precluded from investigating or deciding the questions affecting the plaintiff's pretended title now in issue. In view of these facts, the court could not, by its decree, create a new and original title, nor divest the true owner of his title to the premises and against the parties in actual possession, the decree affords no ground for a judgment of ouster.

I have, after mature reflection, determined to rest my decision upon the actual rights of the parties as they appear, rather than upon ground involving only mere questions of practice or technicalities. The deeds and documentary evidence introduced by the respective parties were all objected to, and were all, at the time of being offered, received subject to the objections so made. I now overrule all of said objections and admit all of said deeds, papers and documents, except the original records of the City of Tacoma. Extracts from said originals, containing all that is material, made under my direction, will be received and filed in the case in place of said original records.

My opinion upon other questions debated by counsel would not be determinative of the rights of the parties, and could not be regarded as anything more than *obiter dicta* and, therefore, not of sufficient value to justify a further extension of this opinion.

Findings of fact may be prepared and a judgment will be entered in accordance with this opinion.

C. H. HANFORD, *Judge*.

ENDORSEMENT.

No. 113. In the United States Circuit Court, District of Washington, Western Division. F. V. McDonald, plaintiff, *vs.* D. B. Hannah, *et ux.*, defendants. Opinion. Filed June 22, 1892. A. Reeves Ayres, clerk. Beebe and Stallcup, attorneys for plaintiffs.

And, afterwards, to-wit: On the 23d day of June, 1892, there was duly filed in said court, in said cause, a motion for a new trial in the words and figures as follows, to-wit :

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.—WESTERN DIVISION.

F. V. McDONALD,	}	Motion for a New Trial.
<i>Plaintiff,</i>		
<i>vs.</i>		
DOLPHUS B. HANNAH and KATE E. HANNAH.	}	
<i>Defendants.</i>		

Now comes the plaintiff and moves the court for a new trial of the said case for these :

I.

Insufficiency of the evidence to justify the decision of the court upon the facts.

II.

Insufficiency of the evidence to justify the decision of the court upon the law.

III.

The decision of the court that plaintiff was without title to the demanded premises is against the law.

For that the deed by Matthews to plaintiff's immediate grantor, Mary A. Givens, under the power of attorney of her husband, vested her with the title to the demanded premises previously held by her husband, James H. Givens, and others.

For that the decree of partition vested plaintiff with all the title in the demanded premises theretofore held by the other parties thereto.

And for that plaintiff's said immediate grantor was the common source of title to the demanded premises.

This motion is made upon the evidence shown by the stenographer's extended notes and the documentary evidence adduced upon the trial of the case, together with the pleadings and proceedings in the case.

W. SCOTT BEEBE and
JOHN C. STALLCUP,
Attorneys for Plaintiff.

Received a copy hereof this 23d day of June, A. D. 1892.

.....
Attorneys for Defendants.

ENDORSEMENT.

F. V. McDonald vs. Dolphus Hannah *et ux.* Motion for new trial. Filed June 23d, 1892. A. Reeves Ayers, clerk. W. S. Beebe and John C. Stalleup, for plaintiff.

And, afterwards, to-wit: On Thursday, the 7th day of July, 1892, the same being the third judicial day of the regular July term of said court, present the Honorable

Cornelius H. Hanford, United States district judge, presiding, the following proceedings were had in said cause, to-wit :

F. V. McDONALD,	} Plaintiff,	} No. 113.
<i>vs.</i>		
DOLPHUS B. HANNAH and	} Defendants.	
KATE E. HANNAH,		

Now, on this 7th day of July, 1892, after the entry of judgment herein, the court being duly advised in the premises, denies plaintiff's motion for new trial heretofore made and filed.

C. H. HANFORD, *Judge.*

ENDORSEMENT.

F. V. McDonald *vs.* D. B. Hannah *et ux.* Order on motion for a new trial. Filed July 7, 1892. A. Reeves Ayers, clerk. R. B. L. 20.

And, afterwards, to-wit : On Thursday, the 7th day of July, 1892, the same being the third judicial day of the regular July term of said court, present the Honorable Cornelius H. Hanford, United States district judge, presiding, the following proceedings were had in said cause, to-wit :

IN THE CIRCUIT COURT OF THE UNITED STATES ; NINTH JUDICIAL CIRCUIT ; DISTRICT OF WASHINGTON.-- WESTERN DIVISION.

F. V. McDONALD,	} Plaintiff,	} No. 113.
<i>vs.</i>		
DOLPHUS H. HANNAH and	} Defendants.	
KATE E. HANNAH,		

This cause came regularly on for trial on the 18th day of February, A. D. 1892, before the court sitting without a jury, trial by jury having been waived by the respective parties by stipulation on file in the cause.

Plaintiff appeared by his attorneys, W. Scott Beebe and J. C. Stalleup, Esqs., and the defendants by their attorneys, Messrs. Judson & Sharpstein. And,

The plaintiff, to prove his case, introduced oral and documentary testimony, and rested, and thereupon defendants introduced oral and documentary proof and rested, and upon the conclusion of defendants' case, plaintiff introduced oral and documentary proof in rebuttal and rested; and thereupon, and on the 19th day of February, 1892, said cause was argued and submitted to the court for its decision.

And, now, on this 7th day of July, A. D. 1892, the court being fully advised in the premises, files this, its

FINDINGS OF FACT :

First: That plaintiff is a citizen of the State of California, and the defendants are citizens of the State of Washington.

Second: That the plaintiff is not the owner in fee of, nor has he a right to, nor is he entitled to the possession of the real property, situate in the City of Tacoma, County of Pierce and State of Washington, and described as follows, to-wit :

Commencing fifty-three and one-third chains north, and six chains east of the southwest corner of section five, in township twenty, north of range three, east of the Willamette meridian; thence running east six chains; thence south six and two-thirds chains; thence west six chains; thence north six and two-thirds chains to the place of beginning.

Third: That the defendants are in the actual possession of said premises, and have been so in the possession of the same for a period of four years immediately preceding the commencement of this action, but that they do not wrongfully withhold the same from plaintiff.

Fourth: That the property, described herein, exceeds the sum of five thousand dollars, to-wit : The sum of twenty thousand dollars.

And, from the foregoing findings of fact, the court finds, as

CONCLUSIONS OF LAW :

That judgment should be entered herein, dismissing plaintiff's action.

WHEREFORE, by reason of the law and the premises,

IT IS ORDERED, ADJUDGED AND CONSIDERED : That plaintiff's action be, and the same is hereby dismissed ; and that the defendants do have and recover of plaintiff the costs and disbursements of this action, to be taxed by the clerk.

C. H. HANFORD, *Judge of said Court.*

ENDORSEMENT.

No. 113. In the United States Circuit Court, District of Washington, Western Division. F. V. McDonald, plaintiff, vs. D. B. Hannah, *et al.*, defendants. Findings of fact and judgment. Filed July 7th, 1892. A. Reeves Ayers, clerk. W. C. Sharpstein, attorney for defendant. Office, room No. — Bank Republic building, Tacoma. Judgment book, pages seventeen and eighteen.

And, afterwards, to-wit : On Friday, the 9th day of September, 1892, the same being the thirteenth judicial day of the regular July term of said court, present the Honorable Cornelius H. Hanford, United States district judge, presiding, the following proceedings were had in said cause, to-wit :

F. V. McDONALD,	} <i>Plaintiff,</i>
<i>vs.</i>	
DOLPHUS B. HANNAH and	} <i>Defendants.</i>
KATE E. HANNAH,	

Now, on this day, counsel for the plaintiff in open court presents his bill of exceptions in this cause, and the same is allowed and signed.

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH
 JUDICIAL CIRCUIT, DISTRICT OF WASHINGTON.—WESTERN DIVISION.

F. V. McDONALD,	}	Bill of Exceptions.
<i>Plaintiff,</i>		
<i>vs.</i>		
DOLPHUS B. HANNAH and KATE E. HANNAH,	}	
<i>Defendants.</i>		

Be it remembered : That the above entitled cause came on for trial regularly in the above entitled court, on February 19, 1892. Plaintiff and defendants, by their respective attorneys, duly stipulated in writing that said case should be tried by the court without the intervention of a jury.

I.

Thereupon the plaintiff, to maintain the issue upon his part, offered in evidence a certified copy of a deed from Mary A. Givens to the plaintiff.

To which offer defendants objected.

First: Upon the ground that the same is incompetent an immaterial, because it was not the best evidence.

Second: Because there is no proof that the grantor ever had possession of the premises described therein, or any part thereof.

Third: Because no title is shown in the grantor to the premises described therein, or to any part thereof.

Which objections the court severally overruled, and ordered the said paper to be admitted in evidence and marked "Exhibit A."

To which order and ruling of the court the defendants, by their counsel, did then and there duly except, and said exception was allowed.

Thereupon the said deed was read in evidence, and a copy of the same is hereto attached, marked "Exhibit A," and made a part of this bill.

II.

Plaintiff thereupon offered the original deed from Mary A. Givens to plaintiff.

To which offer defendants objected.

First: Upon the ground that the same is incompetent because no proof has been made of its execution.

Second: There is no proof that the grantor ever had possession of the premises described therein, or any part thereof.

Third: That no title is shown in the grantor to the premises described therein, or to any part thereof.

Fourth: That the paper offered bears evidence of material alterations having been made, and no competent proof being offered to show that the same were made before execution.

Fifth: The instrument is not acknowledged as required by law to entitle it to be recorded as a conveyance of real estate.

Sixth: It does not appear that it was ever filed for record or recorded in the office of the auditor of Pierce county, the county in which the premises are situated.

Which objections the court severally overruled, and ordered the said paper to be admitted in evidence and marked "Exhibit B."

To which order and ruling of the court defendants, by their counsel, did then and there duly except, and said exception was allowed.

Thereupon the said deed was read in evidence, and a copy of the same is hereto attached, marked "Exhibit B," and made a part of this bill.

III.

Plaintiff then offered in evidence a certified copy of a decree of the Circuit Court of the United States, for the District of Washington, in the case of F. V. McDonald *vs.* John Donaldson *et al.*, the same being a decree in partition.

To which offer defendants objected.

First: Upon the ground that the same is incompetent, it being a decree rendered in a suit to which neither of the defendants herein were parties.

Second: Because no title has been shown in any of the persons recited in said decree, to be owners of any interest in the premises involved in this action.

Which objections the court severally overruled, and ordered the said paper to be admitted in evidence and marked "Exhibit C."

To which order and ruling of the court defendants, by their counsel, did then and there duly except, and said exception was allowed.

Thereupon the said decree was read in evidence, and a copy of the same is hereto attached, marked "Exhibit C," and made a part of this bill.

IV.

Plaintiff then offered in evidence defendant's original answer filed in this cause.

To which offer defendants objected, upon the ground that the same is incompetent, the same having been superseded by an amended pleading.

Which objection the court overruled and ordered said paper to be admitted in evidence and marked "Exhibit D."

To which order and ruling of the court defendants, by their counsel, did then and there duly except, and said objection was allowed.

Thereupon the said answer was read in evidence, and a copy of the same is hereto attached, marked "Exhibit D," and made a part of this bill.

V.

Plaintiff then offered in evidence defendant's first amended answer, filed in this cause.

Which said amended answer was, without objection, admitted and read in evidence, and a copy of the same is hereto attached, marked "Exhibit E," and made a part of this bill.

VI.

The plaintiff then called George P. Riley, who, having been first duly sworn, testified as follows :

I reside in Tacoma ; I knew James H. Givens in his life time ; also knew Mary A. Givens ; they were husband and wife ; James H. Givens died in 1872 ; they had no children to my knowledge ; Mrs. Givens is still unmarried ; I know the property in dispute, and have an approximate idea of its value ; the estimated value of the land in dispute is worth, exclusive of the improvements, ten thousand dollars per acre.

And on cross-examination the witness testified as follows :

James H. Givens and Mary A. Givens, resided in Portland, Oregon, until Mr. Givens' death ; they never resided in Washington territory ; they were married before coming to Portland ; they came from New Bedford, Massachusetts, to Portland.

VII.

The plaintiff's attorneys then stated to the court that, although they did not regard it as necessary, they would offer a certified copy of a patent from the United States to Thomas Hood.

Which said patent was, without objection, admitted and read in evidence, and a copy thereof is hereto attached, marked "Exhibit F," and made a part of this bill.

VIII.

Plaintiff then offered in evidence a certified copy of a deed from Thomas Hood to C. P. Ferry and L. C. Fuller.

To which offer defendants objected that the same was incompetent, purporting to have been acknowledged before a person not authorized under the laws of Washington to take acknowledgments of deeds, and therefore not entitled to record.

Which objection the court overruled and ordered said paper to be admitted in evidence and marked "Exhibit G."

To which order and ruling of the court, defendants, by their counsel, did then and there duly except, and said exception was allowed.

Thereupon the said deed was read in evidence, and a copy of the same is hereto attached, marked "Exhibit G," and made a part of this bill.

IX.

Plaintiff then offered a certified copy of a deed from C. P. Ferry and L. C. Fuller, and their respective wives, to E. M. Burton.

To which offer defendants objected that the same was incompetent and immaterial, no possession or title having been shown in the grantors, or either of them.

Which objection the court overruled and ordered said paper to be admitted in evidence and marked "Exhibit H."

To which order and ruling of the court, defendants, by their counsel, did then and there duly except, and said exception was allowed.

Thereupon the said deed was read in evidence, and a copy thereof is hereto attached, marked "Exhibit H," and made a part of this bill.

X.

Plaintiff then offered a certified copy of a deed from E. M. Burton *et ux.*, to L. C. Fuller and C. P. Ferry.

To which offer defendants objected that the same was incompetent and immaterial, no possession or title having been shown in the grantor.

Which objection was, by the court, overruled and said paper was ordered to be admitted in evidence, and marked "Exhibit I."

To which order and ruling of the court, defendants, by their counsel, did then and there duly except, and said exception was allowed.

Thereupon said deed was read in evidence, and a copy thereof is hereto attached, marked "Exhibit I," and made a part of this bill.

XI.

Plaintiff then offered in evidence a certified copy of a deed from L. C. Fuller and C. P. Ferry, and their respective wives, to the Working Men's Joint Stock Association, a corporation organized under the laws of Oregon.

To which offer defendants objected that the same is incompetent and immaterial, no possession or title having been shown in the grantors, or in either of them.

Which objection the court overruled and ordered said paper to be admitted in evidence, and marked "Exhibit J."

To which ruling of the court defendants, by their counsel, did then and there duly except, and said exception was allowed.

Thereupon said deed was read in evidence, and a copy thereof is hereto attached, marked "Exhibit J," and made a part of this bill.

XII.

Plaintiff then offered in evidence a certified copy of a deed from L. C. Fuller, C. P. Ferry and their respective wives, and the Working Men's Joint Stock Association, to George P. Riley and others.

To which offer defendants objected that the same is incompetent and immaterial, no possession or title having been shown in the grantors, or in either of them, and,

Further, because the paper purports to have been acknowledged before a person not authorized by the laws of Washington to take acknowledgments of deeds, and, therefore, the paper is not entitled to record.

Which objection the court overruled and ordered said paper to be admitted in evidence, and marked "Exhibit K."

To which order and ruling of the court defendants, by their counsel, did then and there duly except, and said exception was allowed.

Thereupon said deed was read in evidence, and a copy thereof is hereto attached, marked "Exhibit K," and made a part of this bill.

XIII.

Plaintiff then offered a certified copy of a power of attorney from George P. Riley, *et al.*, to John W. Matthews.

To which offer defendants objected that the same is immaterial and incompetent.

First: It appearing not to have been executed by Edward Simmons, George Thomas and Annie Rodney, nor by any one for them whose authority has been shown.

Second: Because the same is not acknowledged by all of the parties described as principals, nor by anyone for them whose authority has been shown.

Third: Because said instrument is not acknowledged as required by the laws of Washington so as to entitle it to record. Which objections the court severally overruled, and ordered that said paper be admitted in evidence, and marked "Exhibit L."

To which order and ruling of the court defendants, by their counsel, did then and there duly except, and said exception was allowed.

Thereupon said deed was read in evidence, and a copy thereof is hereto attached, marked "Exhibit L," and made a part of this bill.

XIV.

Plaintiff then offered a certified copy of a deed from George P. Riley and others, by John W. Matthews as attorney-in-fact, to Mary H. Givens.

To which offer the defendants objected that the same is incompetent.

First: Because it purports to be a deed executed by a person describing himself to be an attorney-in-fact, and no power or authority from the persons for whom he professes to act has been shown.

Second : That the only power attempted to be shown appears to have been given by fourteen persons, and the evidence shows that one of them, to-wit : James H. Givens, was dead at the time of the execution of the instrument offered, and that the power under which said attorney professes to act was joint.

Third : And, further, that no possession or title is shown in the parties named as principals, or in any of them, to the premises described and involved in this action, or to any part thereof.

Which objections were severally overruled by the court, and said paper ordered admitted in evidence, and marked " Exhibit M."

To which order and ruling of the court defendants, by their counsel, did then and there duly except, and said exception was allowed.

Thereupon, said deed was read in evidence, and a copy thereof is hereto attached, marked " Exhibit M," and made a part of this bill.

XV.

And, thereupon, plaintiff rested his case, and the defendants, to maintain their defense, offered a certified copy of an instrument, purporting to be a deed from the Territory of Washington to William B. Kelly, of the premises described in the complaint.

To which offer plaintiff objected that the same is incompetent, irrelevant and immaterial.

First : Because it purported to be a deed for land sold for taxes and said deed was not made in the name, and did not run in the name of the Territory of Washington, and notice of expiration of time for redemption was not given before execution of deed.

Second : Because, in the granting clause thereof, it purports to be the deed of Lewis Byrd, sheriff, and not the Territory of Washington.

Third : Because it purports to be a deed made pursuant to a sale of land for territorial and county taxes instead of for city taxes.

Fourth: Because the deed is void upon its face because it does not appear therefrom that there was ever any assessment of the property described therein.

Fifth: And for the further reason that the defendants cannot, under their answer in this case, show any title in themselves.

Which objections the court severally overruled and ordered that said paper be admitted in evidence, and marked "Exhibit N."

To which order and ruling of the court, plaintiff, by his attorneys, did then and there duly except, which exception was allowed.

Thereupon said paper was read in evidence, and a copy thereof is hereto attached, marked "Exhibit N," and made a part of this bill.

XVI.

Defendants then offered and read in evidence, without objection, a deed from W. B. Kelly and wife to Dolphus B. Hannah; a copy of which is hereto attached, marked "Exhibit O," and made a part of this bill.

XVII.

Defendants then introduced and read in evidence, without objection, Ordinances Nos. 58 and 90, of the City of New Tacoma, which are attached hereto, marked respectively, "Exhibits P" and "Q," and made a part of this bill.

XVIII.

Defendants next called in their behalf John P. Judson, who, being first duly sworn, testified as follows :

I am one of the attorneys for the defendants in this case; I know the paper shown me, the original answer of the defendants in this cause; it was drawn by me; the paragraph in said answer called to my attention, numbered third in the further answer and defense, wherein defendants stated that one Mary A. Givens, was the record owner and also the owner in fact of said premises, was not

inserted for the purpose of admitting the title of said Mary A. Givens, but was inserted upon the theory that I had that in order to show a good tax title, it was necessary to allege that the property was assessed either to the owner, or to unknown owners, where the owner was not known; I explained to Mr. Hannah, one of the defendants, what the answer was in general terms, that we had denied the fact that plaintiff was the owner of the property, and had then set up the tax title and proceedings under which the deed was made.

To all of which testimony the plaintiff objected that the same was incompetent, irrelevant and immaterial.

Which objection was, by court, overruled, and exception taken by the plaintiff, and said exception allowed.

XIX.

And, thereupon, D. B. Hannah, one of the defendants in this case, was called in his own behalf, and being duly sworn, testified as follows :

I recognize the paper shown me as the original answer in this case; I signed it and verified it; Mr. Judson handed it to me and stated that I might read it if I liked, but that it was simply an answer denying the title of plaintiff and setting up my title under the tax deed; I told him there was no need of my reading it over because he had made it, and I would sign it; I have always insisted that Mary A. Givens had no title to this property, and certainly had no intention in signing that answer of admitting that either she or the plaintiff was the owner of the property; I am one of the defendants in this action; Kate E. Hannah is my wife; I am the same Dolphus B. Hannah as is named as grantee in "Exhibit O;" I entered into possession of the land described therein, under said deed, "Exhibit O," 1886; in that year I cleared the land; took out the stumps and roots, and the brush and logs at a cost of \$400; in the fall of 1887, I built a substantial board fence around it, and kept the gate locked; in the spring of 1888, I rented it as a cow pasture, and it was used for that purpose until April, 1890, when I erected a dwelling house on it and made other improvements which, altogether, cost me \$5,000. During the time I have held the land I have paid the taxes of the

City of Tacoma, and territorial and county taxes; since I built the dwelling house I have continuously resided there with my family. No one else has ever been in possession of that property to my knowledge; when I first knew it, it was wild land covered with standing timber, logs and some stone.

To all of which testimony the plaintiff objected that the same was incompetent, irrelevant and immaterial.

Which objection was by the court overruled, and exception taken by plaintiff, and said exception allowed.

And, thereupon, the defendants rested their case.

XX.

The plaintiff then, for the purpose of showing that the land in controversy was not assessed, nor advertised, nor sold for taxes, as recited in said tax-deed, called one Edward N. Fuller, who, being first duly sworn, testified as follows :

In 1883 I was editor of a paper known as *The Daily News* in the City of Tacoma; I was editor from August, 1882; the delinquent tax lists were not published in my paper; during those years 1882 and 1883 there was only one other paper in the city, that was the *Daily and Weekly Ledger*; the publication of the *Daily Ledger* commenced in April, 1883, and the publication of the *Daily News* was commenced in September, 1883; each of said papers had a weekly publication preceding the publication of the dailies, and were the only weekly papers published in the city at that time, and that the notice of sale of lands for delinquent taxes for the year 1882 was published in the *Ledger* of April 20 and 27 and May 4, 1883.

Counsel for plaintiff then showed witness a paper of the date of April 20, 1883; also one of April 27, 1883, and another of May 4, 1883, and the witness thereupon stated :

The papers handed me are *Weekly Ledgers*, published in New Tacoma, on the dates of April 20 and 27, and May 4, 1883.

And, thereupon, counsel for plaintiff offered the said papers in evidence, for the purpose of showing that the

premises involved in this action had not been advertised therein for sale for delinquent taxes, there being no property in said advertisement described at all like the property herein involved, other than that shown in "Exhibit R," hereinafter referred to.

To which offer defendants objected, on the ground that the same were incompetent, irrelevant and immaterial; that no testimony is admissible to show whether or not any notice was published, the Code of Washington, under which the tax deed in this case was executed, making said deed conclusive evidence that said notice was published. And,

Further, that more than three years have elapsed since the recording of said deed, and more than three years have elapsed since possession was taken by the defendants of said premises, and the plaintiff in this action and all persons under whom he claims are concluded by said deed and precluded from offering any testimony to impeach said deed.

Which objections were severally overruled by the court, and the papers were ordered admitted and read in evidence, and marked "Exhibit R." To which order and ruling of the court, defendants, by their counsel, did then and there duly except, and said exception was allowed. And that part of the said advertisement in said papers, showing the heading and showing the description therein of the property, is as shown by "Exhibit R," hereto attached and made a part of this bill of exceptions.

XXI.

And, for the purpose mentioned in the last offer, the plaintiff offered the official assessment roll of New Tacoma, Washington territory, for the year 1882, and particularly that portion of said roll on page 24 thereof, which refers to the property assessed in the name of Mary A. Givens.

To which offer defendants objected, that the same is incompetent, irrelevant and immaterial, because the tax deed involved in this action had been filed for record more than three years preceding the commencement of this action, and possession of the premises described therein

had been taken and held for more than three years next preceding the commencement of this action, and the plaintiff was thereby concluded from impeaching said deed.

Which objection was by the court overruled, and the court ordered that a copy of said page 24 be made and admitted in evidence for all intents and purposes and with like effect as the original, and the same was read in evidence and marked "Exhibit S."

To which order and ruling of the court, defendants, by their counsel, did then and there duly except, and said exception was allowed.

XXII.

Plaintiff then offered in evidence the official duplicate assessment roll of New Tacoma, Washington territory, for the year 1882, and particularly that portion of page 26 thereof referring to an assessment in the name of Mary A. Givens.

To which offer defendants objected that the same is incompetent, irrelevant and immaterial, because the tax deed involved in this action had been filed for record more than three years preceding the commencement of this action, and possession of the premises described therein had been taken and held for more than three years next preceding the commencement of this action, and the plaintiff was thereby concluded from impeaching said deed.

Which objection was by the court overruled, and the court ordered that a copy of said page 26 be made and admitted in evidence for all intents and purposes, with like effect as the original; and the same was read in evidence and marked "Exhibit T."

The interlineation SW being in different ink from the others.

To which order and ruling of the court defendants, by their counsel, did then and there duly except, and said exception was allowed.

XXIII.

And, thereupon, plaintiff rested his case. And at the conclusion of taking testimony, and the introduction of paper writings, it was stipulated by counsel, and the court ordered that copies be made thereafter of all papers that

had been offered in original form, with the exception of the original deed, "Exhibit B," and that the copies so made should be used with like effect as the originals and that said originals should remain in the care of the lawful custodians thereof.

This bill of exceptions contains all of the testimony introduced by the plaintiff in support of, or to establish his case, and also all of the testimony introduced on the part of the defendants, or either of them. That afterwards, and on June 22, 1892, rendered a decision to the effect that plaintiff had failed to establish title in himself, and that thereafter a motion for a new trial was filed, which the court denied.

This bill of exceptions, therefore, is examined and allowed within the time allowed by the court for presenting the same.

"EXHIBIT A."

State of Washington, }
County of Pierce. } ss.

I, W. H. Hollis, auditor in and for said county, hereby certify that the within and foregoing instrument of writing is a full, true and correct copy of an instrument in writing which was filed for record in my office at 9:20 o'clock A. M., on the 21st day of January, 1889, and is recorded on pages 244 and 245, vol. 38 of records of deeds, as the same now appears from the record thereof in my office.

Witness my hand and official seal this eighth day of February, 1892.

W. H. HOLLIS,
Auditor Pierce County, Wash.

A. A. SWOPE,
Deputy.

QUITCLAIM DEED.

Know all Men by These Presents, That I, Mary A. Givens, widow of James H. Givens, of New Bedford, Massachusetts, in consideration of fifteen hundred dollars to me paid by Frank V. McDonald, of San Francisco, State of California, do hereby remise, release and forever quitclaim unto Frank

V. McDonald, his heirs and assigns, all the following bounded and described real property, situated in the Territory of Washington :

The southwest quarter of the northwest quarter, and the west half of the southeast quarter of the northwest quarter of section five, in township twenty, north of range three east, in Pierce county, Washington territory.

Also section six, in township twenty, north of range three east, in Pierce county, Washington territory.

Also that piece of land described as commencing at a stake forty rods north of the south line and one hundred and sixty rods from the southwest corner of E. Hanford's donation land claim, and running thence north forty rods ; thence east eighty rods ; thence south forty rods ; thence west eighty rods to place of beginning, situated in section eight and nine in township twenty-four, north of range four east, in King county, Washington territory.

Together, with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and also all my estate, right, title and interest in and to the same.

To have and to hold the above described and granted premises unto the said Frank V. McDonald, his heirs and assigns forever.

And I, Mary A. Givens, the grantor above named, do covenant to and with Frank V. McDonald, the above named grantee, his heirs and assigns, that the above granted premises are free from all encumbrances made or suffered by me, and that I will, and my heirs, executors and administrators shall warrant and forever defend the above granted premises, and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever claiming by, through or under me, but against none others.

In witness whereof, I, the grantor above named, hereunto set my hand and seal this 17th day of October, A. D. 1888.

Her
MARY A. X GIVENS, [Seal.]
Mark.

Signed, sealed and delivered in presence of
FRANK A. MILLIKEN,
EMANUEL SULLAVON.

State of Massachusetts, }
 County of Bristol. } ss.

Be it remembered, That on this 17th day of October, A. D. 1888, before me, the undersigned, a notary public in and for said county and state, personally appeared the within, Mary A. Givens, of New Bedford, in said county, widow of James H. Givens, who is known to me to be the identical person described in, and who executed the within instrument, and acknowledged to me that she executed the same. And I hereby certify that the alterations making this instrument a quitclaim deed, and Frank V. McDonald, grantee therein, instead of Samuel Coulter, were made before signing and executing the same.

In testimony whereof, I have hereunto set my hand and notarial seal, the day and year last above written.

FRANK A. MILLIKEN,

[*Notarial Seal.*]

Notary Public.

State of Massachusetts, }
 County of Bristol. } ss.

I, Thomas J. Cobb, clerk of the Third District Court of Bristol, in and for said county (said court being a court of record), do hereby certify that Frank A. Milliken, of New Bedford, in said county, whose name is subscribed to the certificate of proof, or acknowledgment of annexed instrument, and thereon written was, at the time of taking of such proof or acknowledgment, a notary public of the State of Massachusetts, in and for the said County of Bristol, dwelling in said county, commissioned and sworn, and duly authorized to take the same.

And, further, that I am well acquainted with the hand writing of such notary public, and verily believe that the signature to the said certificate is genuine, and that said instrument is executed and acknowledged according to the laws of the State of Massachusetts.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 17th day of October, 1888.

[*Clerk's Seal.*]

THOMAS J. COBB, *Clerk.*

" EXHIBIT B."

QUITCLAIM DEED. ~~WARRANTY DEED.~~

Know all Men by These Presents, That I, Mary A. Givens, of New Bedford, ~~County of~~ Massachusetts, ~~State of Oregon~~ in consideration of fifteen hundred dollars, ~~Dollars~~ to me paid by ~~Samuel Coulter~~ Frank V. McDonald, of ~~Portland~~ San Francisco, ~~County of Multnomah~~, State of California do hereby remise, release and forever quitclaim ~~Oregon, have bargained and sold and by the presents do grant, bargain, sell and convey~~ unto said Frank V. McDonald, ~~Samuel Coulter~~ his heirs and assigns, all the following bounded and described real property situated in the county of Territory of Washington and State of Oregon :

The southwest quarter of the northwest quarter and the west half of the southeast quarter of the northwest quarter of section five, in township twenty, north of range three east, in Pierce county, Washington territory.

Also, section six, in township twenty, north of range three east, in Pierce county, Washington territory.

Also, that piece of land described as commencing at a stake forty rods north of the south line, and one hundred and sixty rods from the southwest corner of E. Hanford's donation land claim, and running thence north forty rods, thence east eighty rods, thence south forty rods, thence west eighty rods to the place of beginning, situated in sections eight and nine, in township twenty-four north of range four east, in King county, Washington territory.

Together, with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and also all my estate, right, title and interest in and to the same, including dower and claim of dower.

To have and to hold the above described and granted premises unto the said Frank V. McDonald, his heirs and assigns forever. And I, Mary A. Givens, the grantor above named, do covenant to and with Frank V. McDonald, the above named grantee, his heirs and assigns, that the above granted premises are free from all encumbrances made or suffered by me, and that I will and my heirs, executors and administrators shall warrant and forever

defend the above granted premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever claiming by, through or under me, but against none other.

In witness whereof, I, the grantor above named, hereunto set my hand and seal this 17th day of October, A. D. 1888.

Her
MARY A. X GIVENS.
Mark.

Signed, sealed and delivered in presence of

FRANK A. MILLIKEN,
EMANUEL SULLAVON.

State of Massachusetts, }
County of Bristol. } ss.

Be it remembered, that on this 17th day of October, A. D. 1888, before me, the undersigned, a notary public in and for the said county and state, personally appeared the within named Mary A. Givens, of New Bedford, in said county, widow of James H. Givens, who is known to me to be the identical person described herein, and who executed the within instrument and acknowledged to me that she executed the same. And I hereby certify that the alterations making this instrument a quitclaim deed and Frank V. McDonald grantee therein, instead of Samuel Coulter, were made before signing and executing the same.

In testimony whereof, I have hereunto set my hand and notarial seal the day and year last above mentioned.

FRANK A. MILLIKEN, *Notary Public.*

State of Massachusetts, }
County of Bristol. } ss.

I, Thomas J. Cobb, clerk of the Third District Court of Bristol, in and for said county (said court being a court of record) do hereby certify that Frank A. Milliken, of New Bedford, in said county, whose name is subscribed the certificate of proof or acknowledgment of the annexed instrument and therein written was, at the time of taking such proof or acknowledgment, a notary public of the State of Massachusetts, in and for the said County of Bristol, dwelling

in said county, commissioned and sworn and duly authorized to take the same. And, further, that I am well acquainted with the hand writing of such notary public, and verily believe that the signature to the said instrument is executed and acknowledged according to the laws of Massachusetts.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 17th day of October, 1888.

THOMAS J. COBB, *Clerk.*

“EXHIBIT C.”

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.—WESTERN DIVISION.

F. V. McDONALD,
Complainant.
vs.

JOHN DONALDSON, JOHN HUNTINGTON, H. C. CLEMENT, ANNIE VAN OGLE, C. A. GOVE, SAMUEL COULTER, W. H. FIFE, JOHN CARSON, LOUISE M. FLOWERS, CHARLES HOWARD, D. B. HANNAH, Administrator of the Estate of GEORGE LUVINEY, deceased, D. S. MARVIN, F. S. AIKEN, H. C. BOSTWICK, WALTER N. LEE, J. B. WELSH, L. C. ARMSTRONG, B. A. BISSELL, MORRIS GROSS, SHELDON ALLEN, MARY A. SMITH, E. O. FULMER, SEYMOUR R. ALLEN and MATTIE G. FULMER,
Defendants.

The above entitled suit came on to be tried in the above entitled court, on the 21st day of August, A. D. 1891, on the bill of complaint, answers, cross bills, answers to the same, replications, evidence, stipulations of counsel, exhibits, and depositions of witnesses on file therein; plaintiff appearing by W. Scott Beebe, his solicitor and defendant, Samuel Coulter appearing by Watson, Hume & Watson, his solicitors, and Annie Van Ogle and John Carson, said

defendants, appearing by Dell Stuart, their solicitor, and said defendant, H. C. Clement appearing by Fogg & Murray, his solicitor, and C. A. Gove, and John Donaldson two of said defendants, appearing by W. S. Newbury, his solicitor, and W. H. Fife and the other of said defendants appearing by Galusha Parsons, their solicitor, and Seymour Allen of said defendants, and John Plume heretofore duly made party defendant herein, appearing by their solicitor, John C. Stallcup, and the court having heard the same and the arguments of counsel, and not being fully advised, what decree ought to be entered in the premises, took the same under advisement, and now having fully considered the same, finds from the evidence, the following facts :

I.

That the plaintiff, F. V. McDonald, is a citizen and resident of the State of California, that the defendants, Samuel Coulter, C. A. Gove, Charles Howard and F. S. Aiken, are each and all, citizens and residents of the State of Oregon, and each and all of said defendants, except John Donaldson, are citizens and residents of the State of Washington, and the said John Donaldson is a subject of the Queen of Great Britain and Ireland.

II.

That on the 8th day of February, 1870, Louis C. Fuller and Clinton P. Ferry, and their respective wives, were the owners in fee-simple of the following described tract of land, situated in the County of Pierce, in the then Territory of Washington, to-wit: the southwest quarter of the northwest quarter, and the west half of the southeast quarter of the northwest quarter of section five (5), township twenty (20) north of range three (3) east of the Willamette meridian.

III.

That at, and on, and prior to said date, the Workingmen's Joint Stock Association was a private corporation, organized under the laws of the State of Oregon, having its principal office at Portland, in said state.

IV.

That on the said 8th day of February, 1870, the said Clinton P. Ferry and Annie P. Ferry, his wife, and Louis C. Fuller and Annie L. Fuller, his wife, joined in their deed, jointly executed and delivered to the said corporation, in which and by which they conveyed said tracts of land described in the second finding herein, to said corporation.

V.

That prior to, and on the 10th day of February, 1871, John Donaldson, Philip Francis, Charles Gilbert, James H. Givens, Charles Howard, John Huntington, George Washington, George Thomas, George Luviney, William Brown, Mary H. Carr, Edward S. Simmons, George P. Riley and Anna Rodney, were the stockholders, and the only stockholders of said corporation, and each was the owner and holder of 30-464 of all the capital stock of said corporation, except George Luviney, who was the owner and holder of 65-464 of said capital stock, and William Brown, who was the owner and holder of 39-464 of said capital stock.

VI.

That on said 10th day of February, 1871, a question having arisen as to the power of the said corporation to take and hold the title to said real property, it was decided by the officers and managers of the same, that the land should be conveyed to said stockholders, as tenants in common of interests therein, in proportion to the amount of the capital stock of said corporation owned and held by each, and in exchange for the same, and accordingly, the said corporation, on the 10th day of February, 1871, joined with the said Louis C. Fuller and Annie L. Fuller, his wife, and Clinton P. Ferry and Annie P. Ferry, his wife, and duly made, executed and delivered, with said persons named in the fifth finding herein, wherein and whereby they granted and quitclaimed to the said several persons, all of said real estate, to be held by them as tenants in common, in the following proportions: To said William Brown, an undivided 39-464, to said George Luviney, an undivided 65-464, and to John Donaldson, Philip Francis, Charles Gilbert, James H. Givens, Charles Howard, John

Huntington, George Washington, George Thomas, Mary H. Carr, Edward S. Simmons, George P. Riley and Anna Rodney, each an undivided 30-464.

VII.

That it is not true, as it is alleged in the cross-bill of Annie Van Ogle and John Carson, against defendant, Samuel Coulter, that one 30-464, or any other interest was issued to Charles Howard, or was issued or held in the name of Annie Rodney, in trust for him, said Charles Howard, or that he ever was the owner or holder of any other or greater interest therein, that the 30-464 subscribed by him and held by him in his own name, or that said Annie Rodney was not the owner thereof, or never had been, or never had been a subscriber for stock in said corporation, or that said Charles Howard had subscribed said stock in her name, or that said stock was never delivered to said Annie Rodney, or was delivered to said Charles Howard or held by him, or that said Annie Rodney never claimed the same nor pretended to own it in her own right.

IX.

That on the 5th day of September, 1871, an attempt was made to constitute one John W. Matthews attorney-in-fact for all the grantees in said deed, with power to sell and convey said tracts of land and other lands which the said persons owned and held in common by an instrument in writing, which was properly executed and acknowledged by John Donaldson, John Huntington, Philip Francis, Charles Gilbert, James H. Givens, Charles Howard, George Washington, George Luviney, William Brown, Mary H. Carr and George P. Riley, but was not executed or acknowledged by E. S. Simmons, George Thomas or Annie Rodney, in person. That A. S. Gross executed and acknowledged the same on behalf of E. S. Simmons and George P. Riley, signed the name of George Thomas as "proxy" and the instrument bears the name of Annie Rodney.

That on the 9th day of September, 1871, said John W. Matthews attempting and assuming to act under said instrument in writing, and under the belief by him and all of said grantees, that the same was in all respects valid and

sufficient to authorize him so to do ; the said Annie Rodney having no knowledge, except such as Charles Howard had of the same, executed to each of said stockholders, a deed signed by himself as attorney-in-fact, for all of said stockholders, a tract of land described as follows :

To Philip Francis, beginning at a point forty chains north of the southwest corner of said section six, township twenty, range three east, and running thence east six chains ; thence north $6.66\frac{2}{3}$ chains ; thence west six chains ; and thence south $6.66\frac{2}{3}$ chains to the place of beginning.

To Edward S. Simmons, beginning at a point forty chains north, and six chains east of the southwest corner of said section six, and running thence east six chains, thence north $6.66\frac{2}{3}$ chains ; thence west six chains, and thence south $6.66\frac{2}{3}$ chains to the place of beginning.

To George P. Riley beginning at a point forty chains north and twelve chains east of the southwest corner of said section six, and running thence east six chains, thence north $6.66\frac{2}{3}$ chains ; thence west six chains, and thence south $6.66\frac{2}{3}$ chains to the place of beginning.

To Charles Howard, beginning at a point forty chains north and eighteen chains east of the southwest corner of section six, and running thence east six chains ; thence north $6.66\frac{2}{3}$ chains ; thence west six chains, and thence south $6.66\frac{2}{3}$ chains to the place of beginning ; also beginning at a point forty chains north and twenty-four chains east of the southwest corner of said section six, and running thence east six chains ; thence north $6.66\frac{2}{3}$ chains, thence west six chains ; and thence south $6.66\frac{2}{3}$ chains, to the place of beginning.

To George Washington, beginning at a point $46\frac{2}{3}$ chains north of the southwest corner of said section, and running thence east six chains ; thence north $6.66\frac{2}{3}$ chains ; thence west six chains, and thence south $6.66\frac{2}{3}$ chains to the place of beginning.

To Mary H. Carr, beginning at a point $46\frac{2}{3}$ chains north, and six chains east of the southwest corner of said section, and running thence east six chains ; thence north $6.66\frac{2}{3}$ chains ; thence west six chains ; thence south $6.66\frac{2}{3}$ chains to the place of beginning.

To George Thomas, beginning at a point $46\frac{2}{3}$ chains north, and twelve chains east of the southwest corner of said section, and running thence east six chains; thence north $6.66\frac{2}{3}$ chains; thence west six chains, and thence south $6.66\frac{2}{3}$ chains to the place of beginning.

To George Luviney, beginning at a point $46\frac{2}{3}$ chains north, and eighteen chains east of the southwest corner of said section, and running thence east six chains; thence north $6.66\frac{2}{3}$ chains; thence west six chains, and thence south $6.66\frac{2}{3}$ chains to the place of beginning; also beginning at a point $53\frac{1}{3}$ chains north, and eighteen chains east of the southwest corner of said section, and running thence east six chains; thence north $6.66\frac{2}{3}$ chains; thence west six chains, and thence south $6.66\frac{2}{3}$ chains to the place of beginning.

To John Donaldson, beginning at a point $46\frac{2}{3}$ chains north and twenty-four chains east of the southwest corner of said section, and running thence east six chains; thence north $6.66\frac{2}{3}$ chains, thence west six chains, and thence south $6.66\frac{2}{3}$ chains to the place of beginning.

To Charles Gilbert, beginning at a point $53\frac{1}{3}$ chains north of the southwest corner of said section six, and running thence east six chains; thence north $6.66\frac{2}{3}$ chains; thence west six chains, and thence south $6.66\frac{2}{3}$ chains to the place of beginning.

To James H. Givens, beginning at a point $53\frac{1}{3}$ chains north and six chains east of the southwest corner of said section six, and thence running east six chains; north, $6.66\frac{2}{3}$ chains; west six chains, and thence south $6.66\frac{2}{3}$ chains to the place of beginning.

To William Brown, beginning at a point $53\frac{1}{3}$ chains north and twelve chains east of the southwest corner of said section six, and running thence east six chains; north $6.66\frac{2}{3}$ chains; thence west six chains; and thence south $6.66\frac{2}{3}$ chains to the place of beginning.

To John Huntington, beginning at a point $53\frac{1}{3}$ chains north and twenty-four chains east of the southwest corner of said section six, and running thence east six chains; north $6.66\frac{2}{3}$ chains; west six chains; and thence south $6.66\frac{2}{3}$ chains to the place of beginning.

To Charles Howard, beginning at a point forty chains north and twenty-four chains east of the southwest corner of section six, township twenty, north range three east; thence east six chains; thence north $6.66\frac{2}{3}$ chains; thence west six chains; thence south $6.66\frac{2}{3}$ chains to the place of beginning, containing four acres.

To Edward S. Simmons, beginning at a point forty chains north and six chains east of the southwest corner of section six, township twenty, north range three east; thence east six chains; thence north $6.66\frac{2}{3}$ chains; thence west six chains; thence south $6.66\frac{2}{3}$ chains to the place of beginning, containing four acres.

To Annie Rodney, beginning at a point forty chains north and eighteen chains east of the southwest corner of section six, township twenty, north range three east; thence six chains east; thence north $6.66\frac{2}{3}$ chains; thence west six chains; thence south $6.66\frac{2}{3}$ chains to the place of beginning, containing four acres.

XI.

That said deeds, and each of the same, described the initial corner of the description of the premises therein attempted to be conveyed, as a point forty chains, north of the southwest corner of section six, township twenty, north range three east of the Willamette meridian, whereas the same should have been forty chains, north of the southwest corner of section five, in township twenty, north of range three east of the Willamette meridian, and were signed by the name of John W. Matthews and not by the names of any of the said alleged grantors in said deed, and were otherwise incorrect and void.

XII.

That on the 23d day of March, 1873, the said James H. Givens died intestate, leaving Mary A. Givens his widow and only heir-at-law.

XIII.

That on the 24th day of March, 1873, the said John W. Matthews, still assuming to act under the authority of said instrument, in writing, and without any additional authority, made, executed, acknowledged and delivered a second

deed to each of said stockholders, which correctly stated the section in which the said tracts are situated, and the true initial corner of the description in each, and to which he signed the names of several of the stockholders, as grantors therein, and purported to convey to each of said stockholders the same tract purported to be conveyed to said persons by the said deed of September 5, 1871, but correctly stating the initial corner of said tract, except that in said deeds on March 24, 1873, he attempted to convey to the said Charles Howard, the same tract attempted to be conveyed by said deed of September 5, 1871, to Annie Rodney, and to the said Mary A. Givens, the tract attempted by said deed of September 5, 1871, to be conveyed to James H. Givens, and to George Laviney, the same tract attempted by said deed of September 5, 1871, to be conveyed to him and in addition thereto, the same tract attempted by said deed of September 5, to be conveyed to George Washington. That said deed, executed to Charles Howard, recites that the lot described in the said deed of September 5, 1871, to Annie Rodney, was erroneously conveyed to her.

XIV.

That since March 24, 1873, the taxes upon said property have been assessed to the several persons named in said deeds, in severalty, and have been paid by them and their successors in interest.

XV.

That complainant herein has purchased, and is the owner of all the interest of said James H. Givens and Mary A. Givens, his widow, in said tract, whether the same has been divided or is an undivided interest.

That in the year 1888, the defendant, Samuel Coulter, purchased in good faith, and for a valuable consideration, all the interest of Annie Rodney, (now Annie Perry) in said undivided tracts, and received from her and Daniel Perry, her husband, a deed of bargain and sale, conveying to him the same.

XVI.

That in the year 1885, the said Charles Gilbert died intestate, leaving George A. Gilbert, his brother, and sole heir-at-law, and the said defendant, Samuel Coulter, is now

the owner in fee simple, by mesne conveyances from the said George A. Gilbert, of all the interest of the said George A. Gilbert, in said tracts of land.

XVII.

That on the 24th day of March, 1873, the said Matthews, acting under said power of attorney, conveyed to the defendant, John Donaldson, one of the original stockholders in said corporation, a tract of land described as follows: Beginning at a point $46.66\frac{2}{3}$ chains north and twenty-four chains east of the southwest corner of section five, township twenty, north of range three east; thence east six chains; thence north $6.66\frac{2}{3}$ chains; thence west six chains; thence south $6.66\frac{2}{3}$ chains to the place of beginning, containing four acres. That the said Donaldson accepted said deed and thereafter, on the 15th day of April, 1873, conveyed said tract to H. C. Clement, by warranty deed; that said Clement thereafter, on the 15th day of December, 1882, conveyed to W. B. Kelly the northeast one acre of said tract by warranty deed; that said Kelly and wife thereafter, on the 25th day of January, 1883, conveyed said one acre by warranty deed to Morris Gross, who is now in possession thereof under said conveyance. That said Clement conveyed said lands by divers mesne conveyances so that Mary L. Smith and Sheldon Allen, as tenants in common, are now seized and in the possession by conveyance to them of all the following portions thereof, to-wit:

Beginning at a point $46\frac{2}{3}$ chains north and twenty-four chains east of the southwest corner of said section five; thence north $6\frac{2}{3}$ chains; thence east three chains; thence south $3\frac{1}{3}$ chains; thence west three chains; thence south $3\frac{1}{3}$ chains; thence east three chains; thence south $3\frac{1}{3}$ chains; thence west six chains; thence east three chains; thence south $3\frac{1}{3}$ chains; thence west six chains to the place of beginning, containing three acres; except the following mentioned lots in the said three acres, as the same would appear upon a subdivision of said tract into lots, blocks, streets and alleys, according to the general plan of subdivision of the City of Tacoma, within the limits of which city the said tract lies, viz: Lots numbers eleven and twelve in block 1028; lots one, two and three in block 1127; and lot number six in block 1128, and with the exception of the lots above mentioned, the said Sheldon

Allen and Mary L. Smith are now the owners and in possession of, and entitled to the possession of said three acres. Said lands were conveyed to these complainants, Sheldon Allen and Mary L. Smith, by two certain deeds, as follows : A deed dated January 10th, 1878, and recorded in the office of the auditor of Pierce county, April 8th, 1879, in book seven of deeds, at page eighty-six ; and by a certain other deed dated September 13th, 1879, and recorded in the office of the auditor of said county on the 25th day of September, 1879, in book seven of deeds, at page 356 ; in which said two deeds said lands are not described by metes and bounds, but as lots numbered 4, 5, 6, 7, 8, in block numbered 1127, and the west fractional parts of lots 1, 2, 3 and 4, in block numbered 1126, in New Tacoma, as shown by the official plat of said New Tacoma on record in the office of the county auditor of said county ; and those certain other lots shown by said plat, as follows : Lots 1, 2, 3, 4, 5 and 6, in block 1129 ; lots 1, 2, 3, 4, 5, and fractional lot 7, in block 1128 ; and fractional lots 4 and 5 ; and lots 6, 7, 8, 9 and 10, in block 1128 ; and fractional lots 10, 11 and 12, in block 1029 ; which lots embrace the identical lands above described by metes and bounds, and none other ; and are the same lands conveyed by the defendant, H. C. Clement, to John E. Burns by warranty deed, dated September the 11th, 1873, and recorded September 19th, 1873, in book four of deeds, at page 210.

XVIII.

That on the 24th day of March, 1873, the said Matthews acting under said power of attorney, conveyed to the defendant, John Huntington, one of the original stockholders in said corporation, a tract of land described as follows : Beginning at a point $53.33\frac{1}{2}$ chains north, and twenty-four chains east of the southwest corner of section five, township twenty, north range three east, thence east six chains ; thence north $6.66\frac{2}{3}$ chains ; thence west six chains ; thence south $6.66\frac{2}{3}$ chains to place of beginning, containing four acres. And he, the said Huntington, afterwards sold and conveyed certain portions thereof, to-wit : The west half of said four acre tract, to Mary A. Cottle, by warranty deed, dated June 23d, 1873 ; that said Mary A. Cottle, thereafter, on June 17th, 1881, conveyed said west half of said tract to Walter M. Lee ; that said Walter M. Lee, on the 16th

day of July, 1881, conveyed the south half of the tract so conveyed to him, to Byron A. Young ; that said Young, on the 27th day of May, 1882, conveyed said land by warranty deed to one John L. Binder ; that said Binder on the 27th day of November, 1882, conveyed the same by warranty deed to one Jacob Stumpfle ; that said Stumpfle on the 5th day of March, 1881, conveyed the said by quitclaim deed to Hattie B. Child, who is now in possession thereof, under said conveyance. That the said Walter M. Lee died intestate, before the commencement of this action, possessed of all the interest, legal or equitable, which he acquired by said deed to him by the said Mary A. Cottle ; that he left him surviving as his only heirs-at-law, the said Walter H. Lee, Martha A. Lee, Esther Lee, and Mattie G. Fulmer, wife of the said E. O. Fulmer, who as such heirs-at-law, have succeeded to the interests of said decedent, in said lands, as tenants in common, and who have ever since been, and now are, in possession thereof, as such tenants in common.

XIX.

That on the 24th day of March, 1873, the said Matthews, acting under said power of attorney, conveyed to George Thomas, one of the original stockholders in said corporation, a tract of land described as follows : Beginning at a point $46.66\frac{2}{3}$ chains north, and twelve chains east of the southwest corner of section five, township twenty, north of range three east, thence east six chains ; thence north $6.66\frac{2}{3}$ chains ; thence west six chains ; thence south $6.66\frac{2}{3}$ to place of beginning, containing four acres. That the defendant, Louisa M. Flowers, is the devisee of all the interest in said original tract of land of George Thomas, who was one of the stockholders of said corporation, and to whom said Matthews conveyed one of said tracts of land, as hereinbefore stated ; that said will was duly admitted to probate in the probate court of Pierce county, Washington territory, December 2d, 1875, and was recorded in book five of deeds, in the office of the auditor of said county, at page 169.

XX.

That on the 23d day of January, 1873, the said Matthews, acting under said power of attorney, conveyed to William Brown, who was a stockholder in said corporation,

and one of the makers of the said power of attorney to said Matthews, and who at all times after the making of said power of attorney and said conveyance, acquiesced in said attempted partition, without dissent, a tract of land described as follows: Beginning at a point $53.33\frac{1}{2}$ chains north and twelve chains east of the southwest (S. W.) corner of section five, township twenty, north range three east, thence east six chains, thence north $6.66\frac{2}{3}$ chains, thence west six chains, thence south $6.66\frac{2}{3}$ to the place of beginning, containing four acres, being tract numbered three as laid down on the map made for the Workingmen's Joint Stock Association, and on which the division of the sixty acre tract, of which the above is a part, was based. The above land is located in section five, township twenty, north range three east, Willamette meridian. That the said Brown afterwards, by warranty deed, conveyed the land so conveyed to him by said Matthews to one C. P. Ferry; that said Ferry conveyed the same by warranty deed to William B. Kelly; that said Kelly, on the 22d day of March, 1883, conveyed the same by warranty deed to Henry C. Bostwick, who is in possession thereof, under said conveyance; that said Brown, on April 3, 1883, conveyed by warranty deed the south half of the northeast quarter of said four acre tract so conveyed to him by said Matthews to J. B. Welsh, who is now in possession thereof, under said conveyance. That said Brown conveyed the southeast one acre of said tract to Thomas A. Cottle by warranty deed on the 20th day of June, 1873, that said Cottle thereafter, on the 11th day of July, 1881, conveyed the same to Julius Kley by warranty deed; that said Kley, on the 24th day of May, 1883, conveyed the same by warranty deed to John L. Binder, who, on the 12th day of September, 1882, conveyed the same by warranty deed to Thomas C. Armstrong, who is now in possession thereof under said conveyance.

XXI.

That on the 24th day of March, 1873, said Matthews, acting under said power of attorney, conveyed to Philip Francis, who was one of the original stockholders in said corporation, and one of the signers of said power of attorney, and who at all times acquiesced in said attempted partition, the tract of land described as follows: Beginning at a point forty chains north of the southwest corner of section

five (5), township twenty (20), north range three east, thence east six chains, thence north $6.66\frac{2}{3}$ chains, thence west six chains, thence south $6.66\frac{2}{3}$ chains to the place of beginning, containing four acres. That the said Francis accepted the said attempted partition and conveyance made to him by said John W. Matthews without dissent; that afterwards, on the 23d day of June, 1873, he conveyed the east half of said four acre tract by warranty deed to Thomas J. Cottle, who afterwards, on the 8th day of September, 1873, conveyed the same by warranty deed to F. S. Akin, who is now in possession thereof, under said conveyance.

XXII.

That on the 24th day of March, 1873, the said Matthews acting under said power of attorney, conveyed to Charles Howard, who was one of the original stockholders in said corporation, and one of the makers of said power of attorney to said Matthews, and who at all times thereafter acquiesced in the said attempted partition, a tract of land described as follows : Beginning at a point forty chains north and twenty-four chains east of the southwest corner of section five (5), township twenty, north range three east, thence east six chains, thence north $6.66\frac{2}{3}$ chains, thence west six chains, thence south $6.66\frac{2}{3}$ chains to the place of beginning, containing four acres. Also the following described parcels erroneously conveyed to Anna Rodney, to-wit : Beginning at a point forty chains north and eighteen chains east of the southwest corner of section five, township twenty, north range three east, thence six chains, thence north $6.66\frac{2}{3}$ chains, thence west six chains, thence south $6.66\frac{2}{3}$ chains to the place of beginning, containing four acres. That said Howard accepted said deed, and at all times acquiesced without dissent in said attempted partition made to him by said Matthews in the partition attempted to be made; that thereafter, on the 25th day of April, 1882, he executed a power of attorney to one Frank Clark, authorizing him to sell and convey said lands; that afterwards, on the 2d day of September, 1882, he, by his said attorney, executed a warranty deed conveying an undivided half interest in a tract of land described as beginning at a point forty chains north and twenty-four chains east of the southwest corner of section five, thence six chains east, thence north $6\frac{2}{3}$ chains, thence west six chains, thence south $6\frac{2}{3}$ chains to

the place of beginning, containing four acres; also the following described parcel, erroneously conveyed to Annie Rodney, to-wit: Beginning at a point forty chains north and eighteen chains east of the southwest corner of said section five, thence east six chains, thence north $6\frac{2}{3}$ chains, thence west six chains, thence south $6\frac{2}{3}$ chains to the place of beginning, containing four acres.

That said Howard had no right or title to said last described tract of land ; that Samuel Coulter has succeeded to all the rights and interest of the said Annie Rodney therein, by deed of conveyance from her to him, as herein more fully set forth. That upon the 2d day of September, 1882, the said Charles Howard, by his attorney, Frank Clark, conveyed an undivided one-half interest in both of the tracts herein described, to one William Thompson, by warranty deed ; that on the 4th day of November, 1882, said Thompson conveyed said land by warranty deed to Van Ogle ; that said deed described both of the tracts herein described ; that neither said Howard, nor said Thompson as his grantee, had any right or interest in so much of said lands as had been prior to said conveyance by said Matthews to said Howard conveyed, or had been intended to be conveyed to said Annie Rodney. That on the 19th day of March, 1881, said John Carson conveyed by deed of quitclaim to said Van Ogle, all his interest in the north half of the easterly of said two four acre tracts, and the south half of the westerly of said two tracts, that upon the same day the said Van Ogle conveyed by quitclaim deed to said Carson, all his interest in the south half of the easterly of said two four acre tracts, and all his interest in the north half of the westerly of said two tracts ; that the defendant Annie Ogle, has succeeded by deed of conveyance from said Van Ogle, to all the interest at any time held by said Van Ogle to each and both of said tracts.

XXIII.

That on the 24th day of March, 1873, the said Matthews, acting under said power of attorney, conveyed to one George Luviney, one of the original stockholders in said corporation, a tract of land described as follows : Beginning at a point $53\frac{1}{2}$ chains north, and eighteen chains east of the southwest corner of said section five ; thence

east six chains ; thence north $6\frac{2}{3}$ chains ; thence west six chains ; thence south $6\frac{2}{3}$ chains to the place of beginning, containing four acres.

That said Luviney accepted said deed, and thereafter on the 21st day of June, 1873, conveyed the lands herein described to one Thomas J. Cottle by warranty deed ; that thereafter on July 5th, 1873, said Cottle conveyed said lands to one David Jacobi ; that afterwards on the 30th day of March, 1883, said Jacobi conveyed said lands to one George B. Kandle ; that afterwards on the 20th day of April, 1883, said Kandle conveyed said lands to the defendant, William H. Fife, who is now in possession thereof under said conveyance.

XXIV.

That the said Louisa M. Flowers, on the 11th day of October, 1887, conveyed the southwest one acre of the tract conveyed to her by said Matthews by warranty deed, to one L. F. Cook, who afterwards on the 21st day of January, 1888, conveyed the same by warranty deed to D. S. Marvin, who is now in possession thereof under said conveyance.

XXV.

That on the 2d day of May, 1883, the said Louisa M. Flowers, by warranty deed conveyed the southeast one acre of the four acre tract conveyed to her by said Matthews, to J. B. Welsh, who is now in possession thereof under such conveyance.

XXVI.

That Mary H. Carr was one of said original corporators ; that said Matthews, under said power of attorney, conveyed to her on March 24, 1873, four acres of said land described as follows : Beginning at a point $46\frac{2}{3}$ chains north and six chains east of the southwest corner of said section five ; thence east six chains ; thence north $6\frac{2}{3}$ chains ; thence west six chains ; thence south $6\frac{2}{3}$ chains to the place of beginning.

That afterwards, February 2, 1883, said Mary H. Carr conveyed the following portion of said lands to one George B. Kandle, to-wit: Commencing at a point $46\frac{2}{3}$ chains north and six chains east of the southwest corner of said section five; thence east three chains; thence north $3\frac{1}{3}$ chains; thence east three chains; thence north $3\frac{1}{3}$ chains; thence west three chains; thence south $6\frac{2}{3}$ chains to the place of beginning, containing three acres; that afterwards, February 13, 1883, said Kandle conveyed said lands to H. C. Bostwick, who is now in possession thereof under said conveyance.

XXVII.

That Edward S. Simmons was one of the original stockholders of said corporation; that said Matthews, under said power of attorney, conveyed to said Simmons, March 24, 1873, a portion of said tract described as follows: Beginning at a point forty chains north and six chains east of the southwest corner of said section five, in township twenty, range three east, in Pierce county, Washington territory; thence east six chains; thence north $6\frac{2}{3}$ chains; thence west six chains; thence south $6\frac{2}{3}$ chains to the place of beginning, containing four acres; that said Simmons accepted said deed and afterwards, May 3, 1873, conveyed the northwest one acre of the lands therein described to Frank E. Hodgkin; that afterwards, on the 19th day of October, 1883, the said Simmons executed a further and other conveyance by warranty deed, in which said lands were described as follows: All that lot or parcel of land beginning $46\frac{2}{3}$ chains north and six chains east of the southwest corner of section five, aforesaid; thence south $3\frac{1}{3}$ chains; thence east three chains; thence north $3\frac{1}{3}$ chains, and thence west three chains to the place of beginning, containing one acre, more or less. These words follow the description: This deed is given for the purpose of correcting and confirming a certain deed given by Edward S. Simmons to Frank E. Hodgkin, of date May 3, 1873, which deed is recorded in book three, on page 737, of records of deeds for Pierce county, Washington territory.

Afterwards, March 2, 1888, said Hodgkin conveyed said lands by warranty deed to Dana Child, who afterwards,

April 11, 1888, conveyed said lands by warranty deed to B. A. Bissell, who is now in possession thereof under said conveyance.

XXVIII.

That Annie Rodney was one of the original stockholders in said corporation, and as such was entitled to thirty four-hundred-and-sixty-fourths (30-464) of the capital stock hereof, and upon conveyance of the lands owned by said corporation to the stockholders thereof, upon the 10th day of February, 1871, she became entitled to have and to hold in her own right as a tenant in common with all the other stockholders in said corporation herein before named, thirty four-hundred-and-sixty-fourths (30-464) of said original tract of land ; that afterwards, on the 9th day of September, 1871, under the supposed authority given him by the power of attorney made by said stockholders to him, the said Matthews attempted to make partition of said land and executed deeds to said several stockholders for their several interests, that among others he executed to said Annie Rodney a deed for a tract of land therein described as follows: Beginning at a point forty chains north and eighteen chains east of the southwest corner of section six, township twenty, north range three east ; thence east six chains ; thence north $6.66\frac{2}{3}$ chains ; thence west six chains ; thence south $6.66\frac{2}{3}$ chains to the place of beginning, containing four acres.

That the purpose and intent of said conveyance to each and every of said stockholders was to convey lands in section five, according to the description contained in said several deeds ; that said lands were afterwards conveyed by said Matthews to the said Charles Howard, as hereinbefore set out, that in truth and in fact said Howard was not entitled to a conveyance thereof, but the same belonged to, and was the property of the said Annie Rodney ; that the defendant, Samuel Coulter, has, by conveyance from her, succeeded to all her right and interest therein, as hereinbefore set forth.

XXIX.

That one James H. Givens was one of the original stockholders in said corporation, and as such was entitled to thirty four-hundred-and-sixty-fourths (30-464) of the

stock thereof ; that he died in the year 1873 intestate, and without having received a conveyance in severalty of his interest in said lands ; that he left him surviving his widow, Mary A. Givens, who was his sole heir-at-law. That afterwards, on the 22d day of March, 1873, said Matthews, acting under said power of attorney, conveyed to said Mary A. Givens a portion of said original tract described as follows : Beginning at a point $53.33\frac{1}{3}$ chains north, and six chains east of the southwest corner of section five, in township twenty, north range three east ; thence six chains east ; thence north $6.66\frac{2}{3}$ chains ; thence west six chains ; thence south $6.66\frac{2}{3}$ chains to the place of beginning, containing four acres. That on the 17th day of October, 1888, the said Mary A. Givens sold and conveyed to the complainant herein, the said tract of land, who is now in possession thereof under said conveyance.

XXX.

That Charles Gilbert was one of the original stockholders in said corporation, and, as such, entitled to thirty four-hundred-and-sixty-fourths of the capital stock of said corporation ; that, on the 24th day of March, 1873, the said Matthews, acting under said power of attorney, conveyed to the said Gilbert, a portion of said tract described as follows : Beginning at a point $53.33\frac{1}{3}$ chains north of the corner of section five, in township twenty, north range three east ; thence six chains east ; thence north $6.66\frac{2}{3}$ chains ; thence west six chains ; thence south $6.66\frac{2}{3}$ chains to the place of beginning, containing four acres. That the said Samuel Coulter has succeeded by conveyance thereof, to all the rights and interest of the said Gilbert in said lands, and is now in possession thereof.

XXXI.

That George Washington was one of the original stockholders of the said corporation, and as such entitled to thirty four-hundred-and-sixty-fourths (30-464) of the capital stock thereof. That in said partition attempted to be made of said lands by said Matthews under said power of attorney, on the 9th day of September, 1871, he conveyed to said George Washington a tract of land described as follows : Beginning at a point $46.66\frac{2}{3}$ chains north of the

southwest corner of section six, township twenty, north range three east; thence six chains east; thence north $6.66\frac{2}{3}$ chains; thence west six chains; thence south $6.66\frac{2}{3}$ chains to the place of beginning, containing four acres. That in truth and in fact, said description was intended to embrace lands described in section five instead of section six; that afterwards said Matthews conveyed the said lands to George Luviney, but the said Washington was, at all times, the equitable owner thereof. That the defendant, Annie Ogle, has, by conveyance thereof, succeeded to all the rights and interest of the said Washington.

XXXII.

That the said George Luviney died in the year 1875, being, at the time of his death, entitled to hold all of the interest conveyed by said Matthews to said George Riley in the following tract of land: Beginning at a point forty chains north and twelve chains east of the southwest corner of said section five, township twenty, north of range three east of the Willamette meridian, running thence east three chains, thence north $3\frac{1}{3}$ chains, thence west three chains, thence south three chains to the place of beginning. That on the 24th day of March, 1873, the said John W. Matthews, assuming to act under said power of attorney, conveyed to the said Luviney the following tracts in addition to the tract hereinbefore described as having been conveyed by said Luviney to Thomas J. Cottle, and thereafter by mesne conveyances to the defendant, William H. Fife, to-wit: Beginning at a point $46\frac{2}{3}$ chains north of the southwest corner of said section five, township twenty, north of range three east of the Willamette meridian, running thence east six chains, thence north $6\frac{2}{3}$ chains, thence west six chains, thence south $6\frac{2}{3}$ chains to the place of beginning; also that certain other tract beginning at a point $46\frac{2}{3}$ chains north and eighteen chains east of the southwest corner of said section five, township twenty, north of range three east of the Willamette meridian, running thence east six chains, thence north $6\frac{2}{3}$ chains, thence west six chains, thence south $6\frac{2}{3}$ chains to the place of beginning. That at the time of his death, the said Luviney was seized and possessed of all the interest in said lands, excepting that theretofore conveyed by him, and now held by the said Fife, which he received either by virtue of said deed by said Matthews to

him, or to which he was entitled as one of the original stockholders in said corporation as hereinbefore set forth. That he died intestate, leaving him surviving as his sole heir-at-law, one Sarah Elizabeth Jane Allen, who thereafter conveyed said lands to the defendant, Seymour R. Allen. That the first of the four tracts in this paragraph described was, until after the commencement of this suit, claimed by the defendant Annie Van Ogle, under a conveyance thereof by George Washington to her; that the said Annie Van Ogle and Seymour Allen have, since the commencement of this suit, agreed upon a compromise of their claims to said tract; that the said Annie Van Ogle has conveyed by conveyance duly executed by her, and her husband Van Ogle, all her interest in the said tract to the said Allen who is now in possession thereof under said conveyance.

XXXIII.

That the defendant, H. C. Clement, has by mesne conveyances, succeeded to all of the rights and interest of the said Philip Francis, in and to the following described tract, to-wit: An undivided one-third of the northwest one-fourth of the four acre tract hereinbefore referred to as having been conveyed by the said Matthews to the said Francis, the said quarter of said four acre tract, being described as follows: Beginning at a point $3.66\frac{2}{3}$ chains north of the southwest corner of the northwest quarter of section five, township twenty, north of range three east of the Willamette meridian; thence three chains east; thence north $3\frac{1}{2}$ chains; thence west three chains; thence south $3\frac{1}{2}$ chains to the place of beginning. That the said Clement further makes claim adversely to the claim of the defendant, Henry C. Bostwick, to the following described tract: Beginning at a point $56\frac{2}{3}$ chains north, and twelve chains east of the southwest corner of section five, township twenty, north of range three east; thence three chains east; thence north $3\frac{1}{2}$ chains; thence west three chains; thence south $3\frac{1}{2}$ chains to the place of beginning.

But it is found and adjudged that said Clement has no right or title thereto as against the claims of the said Bostwick, and is further found and adjudged that the said Clement has no right, title or interest in, or to any of the said

lands described in the bill of complaint and cross-bills herein, other than the undivided one-third interest in the one acre tract hereinbefore described.

XXXIV.

It is found and adjudged that the defendant, John Plume, has by divers mesne conveyances succeeded to all the right, title and interest of the said George P. Riley, in and to the one-fourth of the tract conveyed by said Matthews to said Riley as hereinbefore set forth, and that he is now in possession thereof.

XXXV.

It is further found and adjudged that the defendant, C. A. Gove, has no right, title or interest in or to any of the said lands described in said bill of complaint.

XXXVI.

It is further found and adjudged that the defendant, John Donaldson, has no right, title or interest in any of the lands in the bill of complaint herein described.

XXXVII.

It is further found that the said partition so attempted to be made by the original stockholders in said corporation and by said Matthews, in the deeds executed by him under the power conferred or attempted to be conferred on him by them, was not valid or effectual in law to operate as a partition of said lands, or to vest in the grantees named in said deeds in severalty the legal title to the lands therein respectively described; and it is further found that the partition so attempted to be made as between the said parties and all of them was in all respects fair, equitable and just, that the said deeds were executed and acted upon and conveyances made thereunder in good faith and with the belief upon the part of the persons so making, and of those receiving the same, that said partition was valid in law to vest in the grantees named in the deeds of said Matthews in severalty the legal title to the lands therein

described. It is further found that each and every of said several parties named in said original deeds and those claiming under them, have paid all taxes and assessments upon the said lands so allotted to them respectively since said attempted partition, and have since in good faith exercised all of the usual acts of ownership over said lands.

It is therefore ordered, adjudged and decreed that each and all of the parties to this suit be estopped, each as against the other, from asserting or claiming any right, title or interest to any of said lands, except to that particular tract allotted to him or her, or to whose under whom they each respectfully made claim, as hereinbefore set forth, except F. V. McDonald and Samuel Coulter, who are not estopped, but who assent to this decree, subject, however, to the further provisions herein contained, as to the partition of said lands.

It is further adjudged and decreed, that partition be made among the several parties to this action, as nearly as practicable according to their respective interests, or the interests of their several grantors, as the same are set forth and described in the deeds of the said Matthews, and that the said lands be allotted to them as nearly as practicable, according to the partition then attempted to be made, but if it shall be ascertained upon a true survey of said original tract, that there is an excess or deficiency, so that the same cannot be divided into exact accordance with said attempted partition, then the same shall be made so as to give to each of the present owners thereof as their respective interests are hereinbefore set forth, his or her equitable interest therein, upon the basis of said original partition, and the interest of said original stockholders in the capital stock of said corporation, as the same are respectively hereinbefore set forth. It is further ordered and directed that A. Reeves Ayres be and he is hereby appointed commissioner of this court, with authority to employ some competent surveyor to locate and survey said lands, and to make a plat thereof, showing the location and area of the respective interests of each and every of the parties to this suit. And said commissioner is directed to procure an abstract of the title to said original tract of land, showing the several conveyances thereof by each and every of the respective grantees in the deeds of the said Matthews, and of all

of the parties claiming under them at any time prior to the commencement of this action, and that said survey, plat and abstract be made a part of his report of his proceedings under this decree.

It is further ordered and adjudged that the final partition of said lands and the determination of all questions not herein expressly determined and adjudged be reserved until the coming in of the report of the said commissioner.

C. H. HANFORD, *Judge.*

Copy of decree signed this 25th November, 1891.

“EXHIBIT D.”

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH
JUDICIAL CIRCUIT, DISTRICT OF WASHINGTON.—WESTERN DIVISION.

F. V. McDONALD,	}	No. . . . Answer.
<i>Plaintiff,</i>		
<i>vs.</i>		
DOLPHUS B. HANNAH and KATE E. HANNAH,	}	
<i>Defendants.</i>		

Come, now, the above named Dolphus B. Hannah and Kate E. Hannah, and for answer to the complaint of the plaintiff herein, they allege as follows :

I.

They deny each and every allegation contained in paragraph second of said complaint.

II.

They admit that they are in the actual possession of said premises, but deny that they wrongfully withhold the same from said plaintiff.

III.

They deny that they wrongfully entered into the possession of said premises, and deny that they wrongfully withhold the same from plaintiff.

And for further answer and defense these defendants allege :

I.

That on the 5th day of November, A. D. 1881, all and singular the premises described in plaintiff's complaint were within the limits established by an act of the legislative assembly of the Territory of Washington, approved November 5th, 1881, entitled : " An Act to Confer a City Government upon New Tacoma," as the corporate limits of New Tacoma ; and that under and by virtue of said act of said legislative assembly, the City of New Tacoma was duly incorporated.

II.

That under the provisions of section thirty-four of said act, the city government of New Tacoma had power and authority to assess, levy and collect taxes for general municipal purposes upon all property, both real and personal, situate within the corporate limits, which was, by law, taxable for territorial and county purposes.

III.

That in the year, A. D. 1882, there was duly levied and assessed by the city government of New Tacoma, a tax upon all the real estate within the limits of said city, including the premises described in the complaint herein, for general municipal purposes. That the said premises, being so, as aforesaid, within the corporate limits of New Tacoma, were by law taxable for territorial and county purposes, and that one Mary A. Givens, was then and there the record owner, also the owner in fact of said premises.

IV.

That in the year, A. D. 1882, there was duly levied and assessed by the city government of New Tacoma a tax upon all the real estate within the limits of said city, including the premises described in plaintiff's complaint, for general municipal purposes, and that all and singular the said premises were duly assessed to said Mary A. Givens, for said year.

V.

That under section sixty-two of said act incorporating New Tacoma, it is provided that the council of said corporation must provide by ordinance within what time all municipal taxes, whether general or special, must be paid to the treasurer, and when the taxes, not so paid, become delinquent; also fixing the time when the tax roll must be returned to the council.

VI.

That in pursuance of the provisions of said section sixty-two, the council of said corporation did provide by ordinance that all municipal taxes must be paid to the treasurer by the 31st day of December, 1882, and that all taxes not so paid should be delinquent; which ordinance was duly passed the 24th day of October, 1882.

VII.

That said premises be so, as aforesaid, assessed to the said Mary A. Givens.

VIII.

That thereafter, the city council of said city, ordered the clerk of said city to deliver to the tax collector of delinquent taxes, (the sheriff of the county,) the tax roll of 1882, upon which the said property described in the complaint herein, was assessed to the said Mary A. Givens, as aforesaid, and caused to be attached thereto a warrant to the said sheriff of Pierce county authorizing the said sheriff to collect all delinquent taxes, as provided by law, and in accordance with the provisions of section sixty-three of said city's charter, and section twenty-nine hundred and three of chapter twenty-five of the Code of Washington.

IX.

That in pursuance of the directions and instructions so given by said city council, the clerk of said city, did, on the 23d day of January, 1883, deliver to the sheriff of Pierce county the duplicate assessment roll containing a list of all persons and property owing taxes in and to the

said City of Tacoma, together with the costs and charges thereon, which said duplicate city assessment roll did then and there include the property described in the complaint herein, the same being assessed thereon for the year ending December 31, 1882, for said municipal taxes, to the said Mary A. Givens.

X.

That on the 2d day of April, 1883, the said sheriff of Pierce county entered in the duplicate assessment roll, immediately following his supplemental assessment, the affidavit required by section twenty-nine hundred and fifty of the Code of Washington territory, to the effect that after due and dilligent search no personal property could be found to pay the taxes assessed against the persons and property described in said duplicate assessment roll remaining unpaid, and that the taxes due from said Mary A. Givens assessed on the land described in plaintiff's complaint, had not been paid, and that the same then and there appeared on said duplicate assessment roll as delinquent and wholly unpaid; that the said taxes so due from said Mary A. Givens and assessed on said land were then delinquent and unpaid and that no personal property could be found belonging to said Mary A. Givens, out of which said taxes could be paid.

That under the provisions of section twenty-nine hundred and sixteen, of the Code of Washington territory, the said sheriff gave public notice of the sale of the real property described in said delinquent list, for the total amount of taxes then due thereon, including printing, interest and costs to date of sale, by publishing for three successive weeks, immediately prior to the first Monday in May, 1883, the said delinquent list, in the manner provided by law, in New Tacoma, Pierce county.

XI.

That said delinquent list contained a notification that all real estate, described thereon, on which the taxes for the preceding year, to-wit: The year 1882, had not been paid would be sold at public auction to satisfy the taxes, penalty, interest and costs due the city from the owners thereof for said year, at New Tacoma, in front of the court house

door in said county and territory ; that said sale would commence on the first Monday in May, and continue until said real estate was sold, as required by law, which notice, so published as aforesaid, contained a description of all property to be sold and the names of the persons to whom said property was assessed ; and that the said delinquent list, so published as aforesaid, contained a description of the property described in plaintiff's complaint, assessed to the said Mary A. Givens.

XII.

That in pursuance of said notice, so published and given as aforesaid, the said sheriff did on the 7th day of May, 1883, offer the said tract of land, described in plaintiff's complaint, for sale between the hours of ten o'clock A. M. and three o'clock P. M., of that day, to pay said taxes, and charges due thereon, at public auction in front of the court house door in said New Tacoma ; that at said sale D. B. Hannah, one of the defendants herein, was the bidder who was willing to take the least quantity of, or the smallest portion of the interest in said land, and pay the taxes, costs and charges due thereon, including one dollar for the certificate of sale, which amounted to the sum of four and 78-100 dollars.

XIII.

That at said sale the said D. B. Hannah purchased the same, and then and there paid the full amount of said taxes, costs and charges, and that thereupon the treasurer of said County of Pierce delivered to said D. B. Hannah the usual certificate of sale ; and the said D. B. Hannah thereby became the purchaser of the land described in the plaintiff's complaint, so sold for taxes as aforesaid. That the said tract was sold subject to redemption, pursuant to the statutes in such cases provided, but that no person redeemed said property from said sale, and no redemption was ever made thereof.

XIV.

That on the 2d day of April, 1886, the said D. B. Hannah duly assigned said certificate of sale, and all his rights thereunder, to one W. B. Kelly, as appears from said certificate of sale, and the assignment thereof.

XV.

That on the 16th day of September, 1886, one Lewis Byrd, then being the sheriff of said County of Pierce, Territory of Washington, by virtue and in pursuance of the statutes in such cases made and provided, did, as sheriff, in the name of the Territory of Washington, execute and deliver to said W. B. Kelly a deed conveying to said W. B. Kelly, his heirs and assigns forever, all and singular the premises described in plaintiff's complaint, in the manner and form provided by law.

XVI.

That the said deed, so as aforesaid made, executed and delivered by said sheriff to said W. B. Kelly, was duly recorded in the auditor's office of said Pierce county, Washington territory, on the 9th day of October, 1886, in book nineteen of deeds, at pages 706 *et seq.*

XVII.

That thereafter on the 1st day of March, 1887, said W. B. Kelly and Mary M. Kelly, his wife, for and in consideration of the sum of one thousand dollars, conveyed to the defendant Dolphus B. Hannah, by warranty deed, all and singular the premises described in plaintiff's said complaint, since which time the defendants have been in the open, notorious and exclusive possession of said premises, and have made permanent improvements thereon costing five thousand dollars.

XVIII.

And these defendant's further say that plaintiff's right to maintain his action to recover the premises described in his complaint herein, so as aforesaid sold for taxes, is barred by the provision of section twenty-nine hundred and thirty-nine of the Code of Washington, which provides that all suits for recovery of land sold for taxes must be commenced three years from the date of the recording of the tax deeds.

Wherefore: These defendants pray judgment against the plaintiff to be dismissed hence without day, and for their costs and disbursements herein.

JUDSON & SHARPSTEIN,
Attorneys for Defendants.

State of Washington, }
County of Pierce. }

D. B. Hannah, being duly sworn, on oath says: That he is the defendant in the above action; that he has read the foregoing answer, and knows the contents thereof, and that he believes it to be true.

D. B. HANNAH.

Subscribed and sworn to before me, this 11th day of January, 1892.

[*Notarial Seal.*]

J. A. WINTERMUTE,

Notary Public, Residing at Tacoma, Pierce Co., Washington.

Filed January 19, 1892.

The Weekly Ledger, New Tacoma, Washington territory, Friday, May 4, 1883. Sheriff's notice of delinquent tax sale.

Under and by virtue of an act of the legislative assembly of the Territory of Washington, approved November 5th, A. D. 1881, I will sell at public auction to the highest bidder for cash, at the court house door, in the City of New Tacoma, for the delinquent city taxes for the years 1882-83, the real estate described in the following list, unless the same shall be redeemed by the person to whom assessed, or their agents. The sale will commence on Monday, May 7th, 1883, at ten o'clock A. M., and continue from day to day, between the hours of ten A. M. and five P. M., until such real estate shall have been sold, or twice offered for sale.

HENRY WINSOR,
Sheriff Pierce County. W. T.

Givens, Mary A.—Commencing sixty chains west and six chains east of the northwest corner of section five, township twenty, north range three east of Willamette

meridian ; thence running east six chains ; thence south $6\frac{2}{3}$ chains ; thence west six chains ; thence north $6\frac{2}{3}$ chains, to the place of beginning, four acres.....\$4.78.

Date of first publication, April 13th, 1883.

ENDORSEMENT.

Sheriff's notice of delinquent tax sale.

"EXHIBIT E."

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH JUDICIAL CIRCUIT, DISTRICT OF WASHINGTON.—WESTERN DIVISION.

F. V. McDONALD,	}	Amended answer.
<i>Plaintiff,</i>		
<i>vs.</i>		
DOLPHUS B. HANNAH and KATE E. HANNAH,	}	
<i>Defendants.</i>		

Come, now, the above named defendants, and by leave of court first obtained, file this, their amended answer, to the complaint of the plaintiff herein, and answering said complaint.

I.

Deny each and every allegation contained in the second paragraph of said complaint.

II.

Admit that they are in the actual possession of the premises described in plaintiff's said complaint, but deny that they are wrongfully withholding the same from said plaintiff.

III.

They deny that plaintiff was ever seized of the premises described in the said complaint, and deny that they wrongfully entered into possession of said premises, and deny that they wrongfully withhold the same from plaintiff.

And for a further answer and defense defendants allege :

I.

That at all the times herein mentioned all and singular the premises described in plaintiff's complaint were within the limits established by an act of the legislative assembly of the Territory of Washington, approved November 5, 1881, and entitled, "An Act to Confer a City Government upon New Tacoma," as the corporate limits of "New Tacoma;" and that under and by virtue of said act of said legislative assembly, the city of "New Tacoma" was duly incorporated.

II.

That under the provisions of sub-division one, of section thirty-four of said act, the city government of "New Tacoma" had the power and authority to assess, levy and collect taxes for general municipal purposes upon all property, real and personal, within the corporate limits of said city, which were by law taxable for territorial and county purposes.

III.

That the premises described in plaintiff's complaint were within the corporate limits of said City of New Tacoma, and were by law taxable for territorial and county purposes.

IV.

That in the year A. D., 1882, there was duly levied and assessed by said city government of New Tacoma, a tax upon all the real estate within the corporate limits of said city, including the premises described in plaintiff's complaint for general municipal purposes, and that all and singular the said premises were duly assessed to one Mary A. Givens for said year.

V.

That under the provision of section sixty-two, of said act, it is provided that the council of "New Tacoma" must provide by ordinance within what time all municipal taxes

must be paid to the treasurer, and that the tax not so paid shall become delinquent. Also fixing the time when the tax roll must be returned to the city council.

VI.

That in pursuance of the provisions of said section sixty-two, the council of said City of "New Tacoma" did provide by ordinance, that all municipal taxes should be paid to the treasurer of said city on or before the 31st day of December, 1882, and that all taxes not paid at that time shall be delinquent, which said ordinance was duly passed the 24th day of October, 1882, and is entitled, "An Ordinance Levying the Annual Tax for General Municipal Purposes for the year A. D. 1882."

VII.

That taxes, amounting to the sum of three dollars were levied and assessed against the premises described in said complaint, but that the same were not paid within the prescribed time of said ordinance, and thereafter the city council of said city ordered the clerk of said city to deliver to the sheriff of the County of Pierce, Territory of Washington, he being the collector of delinquent taxes of said City of New Tacoma, said tax roll of 1882, upon which the said property described in the complaint herein, was assessed to the said Mary A. Givens, as aforesaid, and caused to be attached thereto a warrant directed to the said sheriff of Pierce county, authorizing said sheriff of Pierce county to collect all delinquent taxes, as provided by law, and in accordance with the provisions of section sixty-three of said act of the legislature, and the provisions of Sec. 2903 of Chapter 225 of the Code of Washington territory of 1881.

VIII.

That in pursuance of the directions and instructions so given by the said city council as aforesaid, the clerk of said city did, on the 23d day of January, 1883, deliver to the said sheriff of Pierce county the duplicate assessment roll of said city, containing a list of all persons and property owing taxes in and to the said City of "New Tacoma," together with the costs and charges thereon, which said duplicate city assessment roll did then and there include the property described

in the complaint herein, the same being assessed thereon for the year ending December 31, 1882, for said municipal taxes to the said Mary A. Givens.

IX.

That on the 2d day of April, 1883, the said sheriff of Pierce county, as collector of the delinquent taxes of said city, entered in the said duplicate assessment roll, immediately following his supplemental assessment, the affidavit required by section twenty-nine hundred and fifteen of the Code of Washington territory, to the effect that after due and diligent search no personal property could be found to pay the taxes assessed against the persons and property described in said duplicate assessment roll remaining unpaid.

X.

That the taxes due to the city from said Mary A. Givens, assessed on the land described in plaintiff's, were not paid and the same then and there appeared on said duplicate assessment roll as delinquent and wholly unpaid.

XI.

That under the provisions of section twenty-nine hundred and sixteen of the Code of Washington territory of 1881, the said sheriff gave public notice of the sale of the real property described in said delinquent list, for the total amounts of taxes due thereon, including the printing, interest and costs to date of sale, by publishing the same for three successive weeks immediately prior to the first Monday in May, 1883, in the official paper of said county, to-wit: the said paper being published in said City of New Tacoma in the manner provided by law.

XII.

That said delinquent list contained a notification that all real estate described thereon, on which the taxes for the preceeding year, to-wit: the year 1882, had not been paid, would be sold at public auction to satisfy the taxes, penalty, interest, costs and charges due to the city from the owners thereof for said year, at "New Tacoma,"

in front of the court house door of the County of Pierce and Territory of Washington; that said sale would commence on the first Monday of May, 1883, and continue until said real estate was sold, as required by law, which notice so published as aforesaid, contained a description of all the property to be sold, and the names of the persons to whom said property was assessed; and that the said delinquent list, so published as aforesaid, contained a description of the property described in plaintiff's complaint, assessed to the said Mary A. Givens.

XIII.

That in pursuance of said notice so published and given as aforesaid, the said sheriff did, on the 7th day of May, 1883, said day being the first Monday of May of the said year, 1883, offer the said tract of land described in plaintiff's complaint, for sale between the hours of 10 o'clock A. M., and 3 o'clock P. M. of said day, to pay said taxes and charges due thereon, at public auction in front of the court house door in said "New Tacoma," and that at said sale, D. B. Hannah, one of the defendants herein, was the bidder who was willing to take the least quantity, or the smallest portion of the interest in said land, and pay the taxes, costs and charges due thereon, including one dollar for certificate of sale, in all amounting to the sum of four dollars and seventy-eight cents (\$4.78.)

XIV.

That at said sale the said D. B. Hannah purchased the said premises, and then and there paid the full amount of said taxes, costs and charges due thereon, and that thereupon the treasurer of said County of Pierce delivered to said D. B. Hannah the usual certificate of sale, and by virtue thereof the said D. B. Hannah became the purchaser of the land described in plaintiff's complaint so sold for taxes as aforesaid.

XV.

That on the 2d day of April, 1886, the said D. B. Hannah duly assigned the said certificate of sale, and all his rights thereunder, to one W. B. Kelly.

XVI.

That said premises were not redeemed by any person within the time limited by law, and that thereafter and on the 16th day of September, 1886, one Lewis Byrd, then being the sheriff of the County of Pierce, Territory of Washington, executed and delivered to the said W. B. Kelly, in the manner and form provided by law, a deed conveying to said W. B. Kelly, his heirs and assigns forever, all and singular the premises described in plaintiff's complaint.

XVII.

That said deed, so as aforesaid made, executed and delivered by said sheriff to said W. B. Kelly, was duly recorded in the office of the auditor of said Pierce county, Washington territory, on the 9th day of October, 1886, in volume nineteen of deeds, at pages 706, 707, 708.

XVIII.

That thereafter, and on the 1st day of March, 1887, said W. B. Kelly and Mary M. Kelly, his wife, conveyed to the defendant, Dolphus B. Hannah, by warranty deed, all and singular the premises described in plaintiff's complaint, since which time the defendants have been in the open, notorious and exclusive possession of said premises, and have made permanent improvements thereon, costing five thousand dollars.

And for a further answer and defense, and by way of bar to the maintenance of this action, defendants allege :

That plaintiff is barred of his right to maintain this action by the provisions of section twenty-nine hundred and thirty-nine of the Code of Washington Territory, of the year 1881, which said section provides that any suit or proceeding for the recovery of land sold for taxes, except in cases where the taxes have been paid on the land redeemed, as provided by law, shall be commenced within three years from the time of recording tax deed of sale.

WHEREFORE : Defendants pray judgment against plaintiff to be dismissed hence without day ; that plaintiff's action be dismissed, and that defendants do have and recover their costs and disbursements herein.

JUDSON & SHARPSTEIN,

Attorneys for Defendants.

State of Washington, }
 County of Pierce. } ss.

D. B. Hannah, being duly sworn, on oath says : That he is one of the defendants in the above action ; that he has read the foregoing amended answer, and knows the contents thereof, and that he believes it to be true.

D. B. HANNAH.

Subscribed and sworn to before me, this 8th day of February, 1892.

W. C. SHARPSTEIN, *Notary Public.*

Filed February 9, 1892.

“ EXHIBIT F.”

State of Washington, }
 County of Pierce. } ss.

I, W. H. Hollis, auditor in and for said county, hereby certify that the within and foregoing instrument of writing is a full, true and correct copy of an instrument in writing, which was filed for record in my office, at o'clock M., on the 9th day of September, 1874, and is recorded on page 552, vol. four, of records of deeds, as the same now appears from the record thereof in my office.

Witness my hand and official seal this 13th day of July, 1892.

W. H. HOLLIS,
Auditor Pierce County, Washington.

[Seal.]

By A. A. SWOPE,
Deputy.

Certificate No. 1328.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, Greeting :

WHEREAS : Thomas Hood, of Pierce county, Washington territory, has deposited in the general land office of the United States, a certificate of the register of the land office at Olympia, whereby it appears that full payment has been

made by the said Thomas Hood, according to the provisions of the act of congress of the 24th of April, 1820, entitled, "An Act Making Further Provision for the Sale of the Public Lands," for the south half of the northwest quarter, of the northeast quarter of the southwest quarter, and the northeast quarter of the southwest quarter, of section five, in township twenty, north of range three east, in the district of lands subject to sale at Olympia, Washington territory, containing one hundred and sixty acres, according to the official plat of the survey of the said lands, returned to the general land office by the surveyor general, which said tract has been purchased by the said Thomas Hood.

Now, KNOW YE, that the United States of America, in consideration of the premises, and in conformity with the several acts of congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Thomas Hood, and to his heirs and assigns, the said tract above described.

To HAVE AND TO HOLD the same, together with all the rights, privileges and immunities and appurtenances of whatsoever nature thereunto belonging, unto the said Thomas Hood, and to his heirs and assigns forever.

IN TESTIMONY WHEREOF, I, Ulysses S. Grant, president of the United States of America, have caused these letters to be made patent, and the seal of the general land office to be hereunto affixed.

GIVEN under my hand at the City of Washington, the 20th day of August, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States, the ninety-fourth.

By the President,

U. S. GRANT.

B. J. B. BUNILL, *Secretary*

J. N. GRAINGER,

Recorder of the General Land Office.

[Seal.]

"EXHIBIT G."

State of Washington, }
 County of Pierce. } ss.

I, W. H. Hollis, auditor in and for said county, hereby certify that the within and foregoing instrument of writing is a full, true and correct copy of an instrument in writing which was filed for record in my office, at o'clock M., on the 2d day of November, 1868, and is recorded on pages 358 and 359 volume two, of record of deeds, as the same now appears from the record thereof in my office.

Witness my hand and official seal this 13th day of July, 1892.

[Seal.]

W. H. HOLLIS,
Auditor Pierce County, Wash.
 By A. A. SWOPE, *Deputy.*

[Stamp, 50c.]

KNOW ALL MEN BY THESE PRESENTS : That I, Thomas Hood, in consideration of five hundred dollars, to me paid by C. P. Ferry and L. C. Fuller, the receipt whereof is hereby acknowledged, do by these presents, give, grant, bargain, sell and convey unto the said C. P. Ferry and L. C. Fuller, that piece or parcel of land, being the south one-half of the northwest quarter and northeast quarter of the northwest quarter and the northeast quarter of the southwest quarter of section number five, in township number twenty, north of range number three east, containing one hundred and sixty acres, situate and lying in the County of Pierce, Washington territory.

TO HAVE AND TO HOLD the above granted premises with the privileges and appurtenances thereto belonging to the said C. P. Ferry and L. C. Fuller, their heirs and assigns to their own use and behoof forever. And I, the said Thomas Hood, for myself and my heirs, exectuors and administrators, do covenant with the said C. P. Ferry and L. C. Fuller, their heirs and assigns, that I am lawfully seized in fee of the aforesaid premises; that they are free from all incumbrances; that I have good right to sell and convey the same to the said Ferry and Fuller, as aforesaid; and that I will, and my heirs, executors and administrators

shall warrant and defend the same to the said Ferry and Fuller, their heirs and assigns forever, against the lawful claims and demands of all persons.

IN WITNESS WHEREOF I, the said Thomas Hood, have hereunto set my hand and seal this 14th day of September, in the year of our Lord eighteen hundred and sixty-eight.

THOMAS HOOD. [Seal.]

Signed, sealed and delivered in presence of

WM. S. B. NICHOLSON,
R. WILCOX.

United States of America, }
District of Oregon. } ss.

Be it remembered, that on this 14th day of September, A. D. 1868, personally came before me R. Wilcox, clerk of the District Court of the United States, for the District of Oregon, Thomas Hood, to me known to be the person who signed and executed the within deed and acknowledged to me that he executed the same freely and voluntarily for the purposes therein set forth.

In witness whereof, I have hereunto set my hand and the seal of said court, at Portland, this 14th day of September, A. D. 1868.

[Seal.]

R. WILCOX, *Clerk.*

“EXHIBIT H.”

State of Washington, }
County of Pierce. } ss.

I, W. H. Hollis, auditor in and for said county, hereby certify that the within and foregoing instrument of writing is a full, true and correct copy of an instrument in writing, which was filed for record in my office ato'clock m., on the 7th day of December, 1868, and is recorded on pages 376 and 377, volume two of record of deeds, as the same now appears from the record thereof in my office.

Witness my hand and official seal this 13th day of July, 1892.

W. H. HOLLIS,

Auditor Pierce County, Washington.

[Seal.]

By A. A. SWOPE, *Deputy.*

[Stamp, \$1.00.]

KNOW ALL MEN BY THESE PRESENTS : That L. C. Fuller and Annie L. Fuller, his wife, and C. P. Ferry and Annie P. Ferry, his wife, of the City of Portland, State of Oregon, in consideration of the sum of one thousand dollars paid by E. M. Burton, the receipt whereof is hereby acknowledged, do hereby convey, remise, release and forever quitclaim unto the said E. M. Burton, his heirs and assigns, all that lot, tract or parcel of land, situate in Pierce county, Washington territory, and bounded and described as follows, to-wit :

The northeast quarter of section number six (6), in township number two (2), north of range three (3) east, containing one hundred and sixty (160) acres, also one-third of a fraction consisting of thirteen (13) acres and fraction, entered at the same time as above described premises. Excepting and reserving out of the first above described real estate the following described premises, to-wit :

Commencing at the northeast corner of said tract ; thence south seven hundred and fifty-two feet, six inches (752 feet, 6 inches) ; thence west seven hundred and fifty-two feet, six inches (752 feet, 6 inches) ; north seven hundred and fifty-two feet and six inches (752 feet, 6 inches) ; thence east seven hundred and fifty-two feet and six inches (752 feet, 6 inches) to the place of beginning, containing thirteén (13) acres, more or less.

Also the undivided one-third ($\frac{1}{3}$) of the following described premises, to-wit :

The south half of the northwest quarter, and the northeast quarter of the northwest quarter, and the northeast quarter of the southwest quarter of section number five, township number twenty, north of range number three east, containing one hundred and sixty acres more or less, situate and being in the County of Pierce, Washington territory, with all the buildings, improvements, privileges and appurtenances thereon being and thereunto belonging and appertaining.

TO HAVE AND TO HOLD, the above released premises to the said E. M. Burton, his heirs and assigns, to his own use and behoof forever. And the said parties of the first

part, for themselves and their heirs, executors and administrators, do covenant with the said E. M. Burton, his heirs and assigns, that the said above described premises are free from all incumbrances made or suffered by the said parties of the first part, and that they will and their heirs, executors and administrators shall warrant and defend the same to the said heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through or under them, but against none other.

IN WITNESS WHEREOF, We, the said parties of the first part, have hereunto set our hands and seals this 23d day of November, A. D. 1868.

L. C. FULLER, [Seal.]
 ANNIE L. FULLER, [Seal.]
 C. P. FERRY, [Seal.]
 ANNIE P. FERRY, [Seal.]

Signed, sealed and delivered in presence of
 D. W. WILLIAMS,
 WM. T. B. NICHOLSON.

State of Oregon, }
 Multnomah County. } ss.

On this 23d day of November, A. D. 1868, before me, D. W. Williams, commissioner for the Territory of Washington, duly sworn, appointed and commissioned by the governor of the Territory of Washington, to take the acknowledgment and proof of the execution of deeds or any other instrument of writing under seal, or otherwise, to be used or recorded in said Washington territory, personally appeared L. C. Fuller and Annie L., his wife, and C. P. Ferry and Annie P. Ferry, his wife, each known to me to be the individuals described in and who executed the annexed instrument as parties thereto, and acknowledged to me that they and each of them executed the same freely and voluntarily and for the uses and purposes therein mentioned.

And the said Annie L., wife of the said L. C. Fuller, and Annie P., wife of the said C. P. Ferry, each having first by me been made acquainted with the contents of said instrument hereto annexed, acknowledged to me, on examination separate and apart from and without the hearing of

her said husband, that she executed the same freely and voluntarily, and for the uses and purposes therein mentioned, without fear or compulsion, or undue influence of her said husband, and that she does not wish to retract the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal.]

D. W. WILLIAMS,
Commissioner of Deeds for the Territory of Washington.
Residing at Portland, Oregon.

“ EXHIBIT I.”

State of Washington, }
County of Pierce. } ss.

I, W. H. Hollis, auditor in and for said county, hereby certify that the within and foregoing instrument of writing is a full, true and correct copy of an instrument in writing which was filed for record in my office, at o'clock ... M., on the 22d day of March, 1869, and is recorded on page 418, Vol. two of record of deeds, as the same now appears from the record thereof in my office.

Witness my hand and official seal this 13th day of July, 1892.

W. H. HOLLIS,
Auditor of Pierce County, Wash.

[Seal.]

By A. A. SWOPE, *Deputy.*

[Stamp, \$1.00.]

THIS INDENTURE, made the 15th day of March, in the year of our Lord one thousand eight hundred and sixty-nine, between E. M. Burton and Rhoda Ann Burton, his wife, of the first part, and L. C. Fuller and C. P. Ferry, of the second part :

WITNESSETH, That the said party of the first part, for and in consideration of the sum of one thousand dollars, in lawful money of the United States of America, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have remised,

released and forever quitclaimed, and by these presents do remise, release and forever quitclaim unto the said parties of the second part, and to their heirs and assigns, all the certain lot and pieces or parcels of land, situated, lying and being in Pierce county, Washington territory, and bounded and particularly described as follows, to-wit :

The northeast quarter of section number six (6), in township number two, north of range number three east, containing one hundred and sixty (160) acres ; also a fraction consisting of thirteen acres entered at the same time as the above described premises, also the undivided one-third ($\frac{1}{3}$), of the following described premises, to-wit :

The south half of the northwest quarter and the northeast quarter of the northwest quarter and the northeast quarter of the southwest quarter of section number five, township number twenty, north of range number three east, containing one hundred and sixty acres more or less, situated and lying in the County of Pierce, Washington territory, with all buildings and other improvements whatsoever. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession and demand whatsoever, as well in law as in equity of the said parties of the first part of, in order to the said premises, and every part and parcel thereof with the appurtenances.

To HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances unto the said parties of the second part, their heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set their hands and seals the day and year first above written.

E. M. BURTON, [Seal.]
RHODA ANN BURTON, [Seal.]

Signed, sealed and delivered in the presence of

HELEN M. BURTON,
D. W. WILLIAMS.

State of Oregon, }
 Multnomah County. } ss.

On this 15th day of March, A. D. 1869, before me, D. W. Williams, commissioner for the Territory of Washington, duly sworn, appointed and commissioned by the governor of the said territory to take the acknowledgment and proof of the execution of deeds, or any other instrument of writing, under seal or otherwise, to be used or recorded in said Washington territory, personally appeared E. M. Burton and Rhoda Ann, his wife, known to me to be the individuals described in, and who executed the annexed instrument as parties thereto, and acknowledged to me that they and each of them executed the same freely and voluntarily for the uses and purposes therein mentioned.

And the said Rhoda Ann Burton, wife of the said E. M. Burton, having first by me been made acquainted with the contents of said instrument, hereto annexed, acknowledged to me, on examination separate and apart from, and without the hearing of her said husband, that she executed the same freely and voluntarily for the uses and purposes therein mentioned, without fear or compulsion or undue influence of her said husband, and that she does not wish to retract the execution of the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal.]

D. W. WILLIAMS,

*Commissioner of Deeds for the Territory of Washington,
 Residing at Portland, Oregon.*

“ EXHIBIT J.”

State of Washington, }
 County of Pierce. } ss.

I, W. H. Hollis, auditor in and for said county, hereby certify that the within and foregoing instrument of writing is a full, true and correct copy of an instrument in writing which was filed for record in my office, at o'clockM.,

on the 14th day of April, 1870, and is recorded on pages 588 and 589 Vol. two of record of deeds, as the same now appears from the record thereof in my office.

Witness my hand and official seal this 13th day of July, 1892.

W. H. HOLLIS,

Auditor Pierce County, Wash.

By A. A. SWOPE, *Deputy.*

[*Seal.*]

[*Stamp, \$1.00.*]

THIS INDENTURE, Entered into this 8th day of February, 1870, between Lewis C. Fuller and Annie L. Fuller, his wife, and Clinton P. Ferry and Annie P. Ferry, his wife, parties of the first part, and the Workingmens' Joint Stock Association, of Portland, Oregon, a corporation duly incorporated under the laws of Oregon, party of the second part :

WITNESSETH, that the said parties of the first part, in consideration of six hundred dollars coin, to them paid by the party of the second part, have granted, bargained, sold, conveyed and confirmed, and by these do grant, bargain, sell, convey and confirm unto the said party of the second part, its successors and assigns, all those pieces or parcels of land situate in the County of Pierce and Territory of Washington, known and described on the maps and plats of the United States surveys as the southwest quarter of the northwest quarter of section five (5), and the west half of the southeast quarter of the northwest quarter of section five (5), in township twenty (20), north range three east, containing sixty acres, together with all and singular the tenements and appurtenances.

TO HAVE AND TO HOLD, the said described and conveyed premises unto the said Workingmens' Joint Stock Association, its successors and assigns, forever. And the said parties of the first part, for themselves and their heirs, covenant to and with the said party of the second part, its successors and assigns, that they will, and their heirs, executors and administrators shall warrant and defend the said described and herein conveyed premises unto the said party of the second part, its successors and assigns, against the claims of all persons whomsoever (the United States only excepted) forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the date first above written.

In presence of
 J. J. MURPHY,
 D. W. WILLIAMS.

L. C. FULLER, [Seal.]
 ANNIE L. FULLER, [Seal.]
 C. P. FERRY, [Seal.]
 ANNIE P. FERRY. [Seal.]

State of Oregon, }
 Multnomah County. } ss.

On this 8th day of February, A. D. 1870, before me, D. W. Williams, commissioner for the Territory of Washington, duly sworn, appointed and commissioned by the governor of the Territory of Washington, to take the acknowledgment and proof of the execution of deeds or any other instrument of writing, under seal or otherwise, to be used or recorded in said Washington territory, personally appeared before me, Lewis C. Fuller and Annie L. Fuller, his wife, and Clinton P. Ferry and Annie P. Ferry, his wife, all personally known to me to be the individuals described in and who executed the annexed instrument as parties thereto, and acknowledged to me that they and each of them executed the same freely and voluntarily for the uses and purposes therein mentioned.

And the said Annie L. Fuller, wife of the said L. C. Fuller, and Annie P. Ferry, wife of C. P. Ferry, having first by me been made acquainted with the contents of said instrument hereto annexed, acknowledged to me each on examination separate and apart from and without the hearing of her said husband, that she executed the same freely and voluntarily, for the uses and purposes therein mentioned, without fear or compulsion or undue influence of her said husband, and that she does not wish to retract the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal.]

D. W. WILLIAMS,

Commissioner of Deeds for the Territory of Washington, Residing at Portland, Oregon.

"EXHIBIT K."

State of Washington, }
 County of Pierce. } ss.

I, W. H. Hollis, auditor in and for said county, hereby certify that the within and foregoing instrument of writing is a full, true and correct copy of an instrument in writing which was filed for record in my office, at nine o'clock A. M., on the 6th day of March, 1871, and is recorded on pages ninety-eight and ninety-nine, volume three of record of deeds as the same now appears from the record thereof in my office.

Witness my hand and official seal this 13th day of July, 1892.

W. H. HOLLIS,
Auditor Pierce County, Wash.

By A. A. SWOPE,
Deputy.

[Seal.]

[Stamps, 50c.]

THIS INDENTURE, Made and entered into this 10th day of February, A. D. 1871, between Lewis C. Fuller and Anna L. Fuller, his wife, Clinton P. Ferry and Anna P. Ferry, his wife, and the Workingmens' Joint Stock Association, of Portland, Oregon, a corporation duly incorporated under the laws of Oregon, parties of the first part, and George P. Riley, William Brown, John Huntington, John Donaldson, Edward S. Simmons, Charles Gilbert, George Laviney, George Thomas, James H. Givens, Charles Howard, Mary H. Carr, Anna Rodney, George Washington, Philip Francis, parties of the second part.

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of six hundred dollars (\$600.00) gold coin of the United States, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have remised, released and quitclaimed, and by these presents do remise, release and quitclaim forever unto the said parties of the second part, their heirs and assigns. All these certain pieces or parcels of land, situate and lying and being in Pierce county, Washington territory, United States of America, bounded and

described and known on the maps and plats of the United States survey in and for the said county and territory as follows, to-wit :

The southwest one-quarter ($\frac{1}{4}$) of the northwest one-quarter ($\frac{1}{4}$) of section five (5), and the west one-half of the southeast one-quarter ($\frac{1}{4}$) of the northwest one-quarter ($\frac{1}{4}$) of section five (5), township twenty (20), north range three east, containing sixty (60) acres, together with all and singular the tenements, heriditaments and appurtenances thereunto belonging or appertaining.

TO HAVE AND TO HOLD, The same to themselves, their heirs and assigns, in manner following : To William Brown, thirty-nine four-hundred-and-sixty-fourths (39-464); to George Laviney, sixty-five four-hundred-and-sixty-fourths (65-464); to George P. Riley, John Huntington, John Donaldson, Edward S. Simmons, Charles Gilbert, George Thomas, James H. Givens, Charles Howard, Mary H. Carr, Anna Rodney, George Washington and Philip Francis, thirty four-hundred-and-sixty-fourths (30-464) each.

IN WITNESS WHEREOF, The parties of the first part, Lewis C. Fuller and Anna F. Fuller, his wife, Clinton P. Ferry and Anna P. Ferry, his wife, and the Workingmens' Joint Stock Association, of Portland, have hereunto set their hands and seals, and the Workingmens' Joint Stock Association have caused their president and secretary's signature to be subscribed, and the seal of the association to be affixed hereto, the day and year first above written.

L. C. FULLER, [Seal.]

ANNIE L. FULLER, [Seal.]

C. P. FERRY, [Seal.]

ANNIE P. FERRY, [Seal.]

GEO. P. RILEY. [L. S.]

President of Workingmens' Joint Stock Association.

[Seal.] EDWARD S. SIMMONS, [L. S.]

Secretary of Workingmens' Joint Stock Association.

Signed, sealed and delivered in presence of

D. SMOLERMAN,

C. A. DOLPH.

State of Oregon, }
 Multnomah County. } ss.

On this 20th day of February, A. D. 1871, before me personally came L. C. Fuller and Anna L. Fuller, his wife, Clinton P. Ferry and Anna P. Ferry, his wife, Geo. P. Riley, president of the Workingmens' Joint Stock Association, and Edward S. Simmons, secretary of the said Workingmens' Joint Stock Association, who are all to me personally known to be the identical persons who are described in and who executed the forgoing indenture, and acknowledged to me that they had executed the same.

And said Geo. P. Riley and said Edward S. Simmons acknowledged to me that they executed the same as president and secretary of the Workingmens' Joint Stock Association, respectively, and said Anna L. Fuller, wife of said L. C. Fuller, and said Anna P. Ferry, wife of said Clinton P. Ferry, on an examination by me, made separate and apart from their said husbands, acknowledged to me that they executed the same freely and voluntarily, without any fear, compulsion or coercion from any person whomsoever.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this, the day in this certificate above written.

C. A. DOLPH,

[Seal.] *Notary Public for the State of Oregon.*

“ EXHIBIT L.”

State of Washington, }
 County of Pierce, } ss.

I, W. H. Hollis, auditor in and for said county, hereby certify that the within and foregoing instrument of writing is a full, true and correct copy of an instrument in writing which was filed for record in my office, at o'clock M., on the 11th day of December, 1871, and is recorded on page sixty-three and sixty four, Vol. one, of record of power of attorney, as the same now appears from the record thereof in my office.

Witness my hand and official seal this 13th day of July, 1892.

W. H. HOLLIS,

Auditor Pierce County, Wash.

[Seal.]

By A. A. SWOPE,

Deputy.

[Stamp \$1.00 Dollar, Cancelled.]

KNOW ALL MEN BY THESE PRESENTS: That we, George P. Riley, William Brown, John Huntington, John Donaldson, Edward S. Simmons, Charles Gilbert, George Luviney, George Thomas, James H. Givens, Charles Howard, Mary H. Carr, Anna Rodney, George Washington and Philip Francis, of Portland, Oregon, have made, constituted and appointed, and by these presents do make, constitute and appoint John W. Matthews, of said city and state, our true and lawful attorney, for us and in our names, place and stead, to grant, bargain, sell, convey, alien, remise, release, quitclaim, assign or transfer all such lands for such sum or price, and on such terms as to him shall seem meet, said lands being more particularly known as a certain tract described as follows, to-wit:

The southwest one-quarter ($\frac{1}{4}$) of the northwest one-quarter, of section five (5), and the west one-half ($\frac{1}{2}$) of the southeast one-quarter ($\frac{1}{4}$), of the northwest one-quarter ($\frac{1}{4}$), of section five (5), township twenty (20), north range three (3) east, containing sixty (60) acres; also a block of land commencing at a stake (80) feet north of the northwest corner of block number twenty-one (21), in Hanford's addition to South Seattle, W. T.; running thence north two hundred and forty feet (240); thence east two hundred and fifty-six (256) feet; thence south two hundred and forty (240) feet; thence west two hundred and fifty-six feet to the place of beginning.

Also a tract of land commencing at a stake located eighty (80) rods north of a point on the south line of E. Hanford's donation claim, which point is one hundred and sixty (160) rods east of the southwest corner of said claim; running thence north twenty rods; thence east eighty (80) rods; thence south twenty (20) rods and thence west eighty rods to the place of beginning, containing ten (10) acres.

Also a tract commencing 295.15 feet west from the northeast corner of the northeast quarter of section six, township twenty, north range three east, being the northwest corner of a tract of land owned by Connell and Clements; thence west 162 18-100 feet to the northeast corner of tract of land belonging to Joseph Buchtel; thence south along the east line of said tract 295.16 feet to the southeast corner of said tract; thence west along the south line of said tract

295.16 feet to the southwest corner of said tract ; thence south 225.75 feet ; thence east 752.5 feet ; thence north 225.75 feet to the southeast corner of said tract of land belonging to Connell and Clements ; thence west along the south line of said tract 295.16 feet to the southwest corner of said tract ; thence north to the place of beginning, containing five (5) acres, and being in Pierce county, W. T.

And for all the powers aforesaid, for us, and in our names to make, execute, acknowledge and deliver all necessary deeds, with or without seal.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 5th day of September, A. D. 1871.

GEORGE PUTNAM RILEY,	[Seal.]
WILLIAM BROWN,	[Seal.]
JOHN HUNTINGTON,	[Seal.]
JOHN DONALDSON,	[Seal.]
ED. S. SIMMONS,	
By A. S. GROSS, <i>Attorney.</i>	[Seal.]
^{His}	
CHARLES X GILBERT,	[Seal.]
^{Mark.}	
GEORGE LUVINEY,	[Seal]
GEORGE THOMAS,	
By GEO. P. RILEY, <i>proxy,</i>	[Seal.]
^{His}	
JAMES H. X GIVENS,	[Seal.]
^{Mark.}	
^{His}	
CHARLES X HOWARD	[Seal.]
^{Mark.}	
MARY H. CARR,	[Seal.]
^{His}	
GEORGE X WASHINGTON,	[Seal]
^{Mark.}	
ANNA RODNEY,	
^{His}	
Per CHAS. X HOWARD, <i>Her proxy,</i>	[Seal.]
^{Mark.}	
PHILIP FRANCIS.	[Seal.]

Signed, sealed and delivered in presence of

A. S. GROSS,
GILBERT ROSENSTORK.

State of Oregon, }
 County of Multnomah, } ss.

THIS CERTIFIES, That on this the 5th day of September, 1871, before me, the undersigned, personally appeared the within named George P. Riley, Wm. Brown, John Huntington, John Donaldson, Ed. S. Simmons, by his attorney, A. S. Gross, Charles Gilbert, George Luviney, George Thomas by his proxy, Geo. P. Riley, Jas. H. Givens, Chas. Howard, Mary H. Carr, George Washington, Anna Rodney per Chas. Howard her proxy, and Philip Francis, who are known to me to be the persons described in and who executed the within instrument, and acknowledged to me that they executed the same for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

[Seal.]

A. S. GROSS,
Commissioner of Deeds for Wash. Territory.

“EXHIBIT M.”

State of Washington, }
 County of Pierce. } ss.

I, W. H. Hollis, auditor in and for said county, hereby certify that the within and foregoing instrument of writing is a full, true and correct copy of an instrument in writing which was filed for record in my office, at twelve o'clock...M., on the 22d day of March, 1873, and is recorded on page 699, volume three of record of deeds as the same now appears from the record thereof in my office.

Witness my hand and official seal this 7th day of September, 1892.

[Seal.]

W. H. HOLLIS,
Auditor for Pierce County, Wash.

By A. A. SWOPE,
Deputy.

JOHN W. MATTHEWS TO MARY A. GIVENS.

KNOW ALL MEN BY THESE PRESENTS, That we, George P. Riley, Charles Gilbert, Philip Francis, George Luviney, John Donaldson, George Washington, Charles Howard,

George Thomas, Edward S. Simmons, Mary H. Carr, William Brown, John Huntington and Anna Rodney, by their attorney-in-fact, John W. Matthews, in consideration of one dollar to us paid by Mary A. Givens, do hereby remise, release and forever quitclaim unto the said Mary A. Givens and unto her heirs and assigns, the following described real estate :

All of lots numbered one, two, three, four, five, six and seven in block numbered sixty-four (64), Riley's Addition to Riley Addition to South Seattle, Washington territory. Also lots numbered two and three in water block lettered "A," as per plats of said addition on file in King county, of said territory. Also a certain piece of real estate described as follows, to-wit: Beginning at a point $53.33\frac{1}{3}$ chains north and six chains east of the southwest corner of section five, township twenty, north of range three east; thence east six chains; thence north $6.66\frac{2}{3}$ chains; thence west six chains; thence south $6.66\frac{2}{3}$ chains to place of beginning, containing four (4) acres. Also one parcel of land beginning at a point 4.47 chains south and 5.70 chains west of the northeast corner of section six, township twenty, north range three east; thence south 1.71 chains; thence west 1.90 chains; thence north 1.71 chains; thence east 1.90 chains to place of beginning, containing one-third of an acre ($\frac{1}{3}$), all being in (*i. e.*, the last two described parcels of land) Pierce county, Washington territory.

GEORGE P. RILEY,
By JOHN W. MATTHEWS,
His Attorney-in-Fact. [Seal.]

CHARLES GILBERT,
By JOHN W. MATTHEWS,
His Attorney-in-Fact. [Seal.]

PHILIP FRANCIS,
By JOHN W. MATTHEWS,
His Attorney-in-Fact. [Seal.]

GEORGE LUVINEY,
By JOHN W. MATTHEWS,
His Attorney-in-Fact. [Seal.]

JOHN HUNTINGTON,
By JOHN W. MATTHEWS,
His Attorney-in-Fact. [Seal.]

JOHN DONALDSON,
By JOHN W. MATTHEWS,
His Attorney-in-Fact. [Seal.]

GEORGE WASHINGTON,
By JOHN W. MATTHEWS,
His Attorney-in-Fact. [Seal.]

CHARLES HOWARD,
By JOHN W. MATTHEWS,
His Attorney-in-Fact. [Seal.]

GEORGE THOMAS,
By JOHN W. MATTHEWS,
His Attorney-in-Fact. [Seal.]

ANNA RODNEY,
By JOHN W. MATTHEWS,
Her Attorney-in-Fact. [Seal.]

EDWARD S. SIMMONS,
By JOHN W. MATTHEWS,
His Attorney-in-Fact. [Seal.]

MARY A. CARR,
By JOHN W. MATTHEWS,
Her Attorney-in-Fact. [Seal.]

WILLIAM BROWN,
By JOHN W. MATTHEWS,
His Attorney-in-Fact. [Seal.]

Signed, sealed and delivered in presence of

J. E. EVANS,
A. S. GROSS.

State of Oregon, }
County of Multnomah. } ss.

BE IT REMEMBERED, That on this 15th day of March, A. D. 1873, before the undersigned, a commissioner of deeds of the Territory of Washington, for the State of Oregon, duly commissioned, sworn and acting, residing in the City of Portland, Oregon, personally appeared the above named John W. Matthews, to me known to be the attorney-in-fact for George P. Riley, Charles Gilbert, Philip Francis, George Luviney, John Donaldson, George Washington, Charles Howard, George Thomas, Edward S. Simmons, Mary A. Carr, William Brown, John Huntington and Anna Rodney, the person described in, and who as attorney-in-fact

for the said George P. Riley, Charles Gilbert, Philip Francis, George Luviney, John Donaldson, George Washington, Charles Howard, George Thomas, Edward S. Simmons, Mary A. Carr, William Brown, John Huntington and Anna Rodney, executed the foregoing deed, and acknowledged that he executed said deed as such attorney-in-fact, freely as the act and deed of his said principals for the purposes therein specified.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal of office the day and year last above written.

A. S. GROSS,

[Seal.] *Commissioner of Deeds for Washington Territory.*

“EXHIBIT N.”

State of Washington, }
County of Pierce. } ss.

I, W. H. Hollis, auditor in and for said county, hereby certify that the within and foregoing instrument of writing is a full, true and correct copy of an instrument in writing which was filed for record in my office at 1:15 o'clock P. M., on the 9th day of October, 1886, and is recorded on pages 706-708, volume nineteen of record of deeds, as the same now appears from the record thereof in my office.

Witness my hand and official seal this 9th day of February, 1892.

W. H. HOLLIS,

Auditor Pierce County, Wash.

By H. H. SWOPE,

Deputy.

[*County Auditor Seal Pierce County, Washington.*]

THIS INDENTURE, Made this 17th day of September, A. D. 1886, between the Territory of Washington, by Lewis Byrd, sheriff of Pierce county, in said Territory of Washington, party of the first part, and W. P. Kelly, party of the second part, Witnesseth, that Whereas, under the provisions of subdivision one of section thirty-four of the city charter of New Tacoma, Pierce county, Washington territory, approved November 5, 1881, the city government of

said city had power and was authorized to assess, levy and to collect taxes for general municipal purposes on all property by law taxable for territorial purposes, and

WHEREAS, Said city government did cause a tax to be levied upon the real estate hereinafter described for municipal purposes in the year 1882, as by said section thirty-four provided, and

WHEREAS: Under the provisions of section sixty-three, of said city charter of New Tacoma, provisions are made for the collection of delinquent taxes, as in the manner provided for the collection of delinquent territorial and county taxes, by the laws of Washington territory, and

WHEREAS: Section twenty-nine hundred and three of chapter twenty-five of the Code of Washington for the year 1881, provides that delinquent taxes shall be collected by the sheriff of the county by distraint and sale of property, and

WHEREAS: The city council of said city caused the clerk of said city to deliver to the tax collector of said city of New Tacoma, the tax roll of 1882, and caused to be attached thereto a warrant directed to the sheriff of said Pierce county, authorizing the said sheriff of Pierce county to collect said delinquent taxes as provided by law, all of which is fully provided for and in accordance with provisions of said section sixty-three of the said city charter, and

WHEREAS: It is made the duty of the clerk of said city to deliver to the sheriff of the said county, or collector of delinquent taxes, the duplicate assessment roll for the collection of all delinquent taxes of said year, and

WHEREAS: The clerk of the City of New Tacoma, Washington territory, did, on the 23d day of January, A. D. 1883, deliver to the sheriff of Pierce county the duplicate city assessment roll, containing the list of all persons and property, then owing taxes in said city and to said city of New Tacoma, together with costs and charges due thereon, which said duplicate city assessment roll did there include the property herein described, the same being then assessed for the year ending on the 31st day of December, 1882, for city municipal taxes to one Mary A. Givens.

That on the 2d day of April, A. D. 1883, the said sheriff of Pierce county, entered in the said duplicate assessment roll, immediately following his supplemental assessment, the affidavit required under section twenty-nine hundred and fifteen of the Code of Washington territory, to the effect that after due and diligent search, no personal property could be found to pay the taxes assessed against the persons and property there described on said duplicate assessment roll remaining unpaid, and that the taxes due from the said Mary A. Givens assessed on the land herein described, had not been paid and that the same then and there appeared on said duplicate assessment roll as delinquent and wholly unpaid, and that the said taxes due from said Mary A. Givens, as aforesaid, assessed on said land, were then delinquent and unpaid, and that no personal property could be found belonging to said Mary A. Givens. That under the provisions of section twenty-nine hundred and sixteen of the Code of Washington territory, the said sheriff gave public notice of the sale of the real property described in said delinquent list, for the total amount of taxes then due thereon including printing, interest and costs to date of sale by publishing for three successive weeks immediately preceding the first Monday in May, A. D. 1883, the said delinquent tax list in the....., a newspaper published weekly at New Tacoma, in the said County of Pierce, and being the official paper of said County of Pierce. That said delinquent list contained a notification that all real estate described therein upon which the taxes for the preceding year, the year A. D. 1882, had not been paid, would be sold at public auction to satisfy all taxes, penalties, interest, and costs due the territory and the said county from the owners thereof for said year at New Tacoma, in front of the court house door in said county and territory, that said sale would commence on the said first Monday of May and continue until the said real estate was sold as required by law, which said notice so published as aforesaid, contained a description of all the property to be sold and the names of the persons to whom said property was assessed. That the said delinquent list so published as aforesaid, contained the description of the property assessed to said Mary A. Givens, which said property was described thereon as follows :

Commencing sixty (60) chains north and six (6) chains east of the southwest corner of section five (5), in township twenty (20), north of range three (3) east of the Willamette meridian; thence running east six (6) chains; thence south six and two-thirds ($6\frac{2}{3}$) chains; thence west six (6) chains; thence north six and two-thirds ($6\frac{2}{3}$) chains to the place of beginning, and containing four (4) acres in Pierce county, Washington territory. The taxes then due thereon amounted to four and 78-100 dollars (\$4.78) including interest and costs.

That in pursuance of said notice so published and given as aforesaid, the said sheriff on the 7th day of May, A. D. 1883, offered the aforesaid tract of land for sale between the hours of ten o'clock A. M. and three o'clock P. M. of that day, to pay said taxes and charges due thereon, at public auction in front of the court house door at said New Tacoma, that at said sale D. B. Hannah was the bidder who was willing to take the least quantity of, or smallest portion of the interest in said land and pay said taxes, costs, charges due thereon, including one dollar for the certificate of sale which amounted to the sum of four and 78-100 dollars and cents. That the least quantity of, or smallest portion of the interest in said land lying and being in said Pierce county and Territory of Washington, is as heretofore described, which was struck off to the said D. B. Hannah who paid the full amount of said taxes, costs and charges and become the purchaser of the said above described tract of land so sold for said taxes as aforesaid. That the said tract of land so sold was sold subject to redemption pursuant to the statutes as therein provided. And, whereas no person has redeemed the aforesaid described property during the time allowed by law for its redemption, and as stated in the certificate of sale thereof. And, whereas the said D. B. Hannah did on the 2d day of April, A. D. 1886, duly assign, sell and transfer his certificate of sale, and all his right thereunder unto the said party of the second part, as appears from said certificate of sale and assignment thereof. Now, therefore, this indenture witnesseth for and in consideration of the sum of four dollars and seventy-eight cents, to the said sheriff paid at the time of making said sale, the receipt whereof is acknowledged in said certificate of sale, I, Lewis Byrd, sheriff of said Pierce county, Washington territory,

by virtue and in pursuance of the statutes in such cases made and provided, have granted, bargained, sold, conveyed and confirmed, and by these presents do grant, bargain, sell, convey and confirm unto the aforesaid W. B. Kelly, and to his heirs and assigns forever, all that tract, piece or parcel of land so sold and hereinbefore and lastly described in this deed as fully and absolutely as I, Lewis Byrd, sheriff as aforesaid, may or can lawfully sell and convey the same, together with all and singular the tenements and appurtenances thereunto belonging, or in anywise appertaining to the said Mary A. Givens, and of all owner claimants thereof known and unknown in and to said last described premises, and every part and parcel thereof, with the appurtenances which she, he or they, or either of them, had or possessed when the said assessment or levy was made, to have and to hold all and singular the hereinbefore and last mentioned and described premises together with the appurtenances thereof unto the said W. B. Kelly, the said party of the second part, his heirs and assigns forever.

In witness whereof I have hereunto set my hand and seal the day and year first hereinbefore written.

TERRITORY OF WASHINGTON,
By LEWIS BYRD, [*Seal.*]
Sheriff of Pierce County.

Signed, sealed and delivered in the presence of

L. G. SHELTON,
G. M. GRANGER.

“ DEFENDANT’S EXHIBIT I, C. B. E. ”

Territory of Washington, }
County of Pierce. } ss.

This certifies, that on this 22d day of September, in the year of our Lord one thousand, eight hundred and eighty-six, before me, a notary public in and for Pierce county, Washington territory, personally appeared the within named Lewis Byrd, known to me to be the sheriff of Pierce county, Washington territory, whose name is subscribed to the foregoing deed, is personally known to me to be the individual described therein, and who executed the within deed

for the Territory of Washington, and acknowledged the same to be his free act and deed, and act and deed of the Territory of Washington for the uses and purposes therein specified.

In witness hereof I have hereunto set my hand and seal the day and year in this certificate first above written.

[*Seal.*]

A. A. LOWE,
Notary Public.

“EXHIBIT O.”

State of Washington, }
County of Pierce. } ss.

I, W. H. Hollis, auditor in and for said county, hereby certify that the within and foregoing instrument of writing is a full, true and correct copy of an instrument in writing which was filed for record in my office at 3:15 o'clock P. M., on the 7th day of March, 1887, and is recorded on page 479, Vol. twenty of record of deeds, as the same now appears from the record thereof in my office.

Witness my hand and official seal this 9th day of February, 1892.

W. H. HOLLIS,
Auditor Pierce County.

[*County Auditor Seal.*]

By A. A. SWOPE,
Deputy.

This indenture witnesseth, that William B. Kelly and Mary M. Kelly, his wife, of Pierce county, Washington territory, parties of the first part, for and in consideration of the sum of one thousand dollars in gold coin of the United States of America, to them in hand paid by Dolphus B. Hannah, of the same place, the party of the second part, have granted, bargained and sold, and by these presents do grant, bargain and sell and convey all our right, title and interest unto the said party of the second part, and to his heirs and assigns, the following described premises, situate, lying and being in the County of Pierce, Territory of Washington, to-wit: Commencing sixty (60) chains north and six (6) chains east of the southwest corner of section five (5), township twenty (20), north of range three (3) east, and running thence east six (6) chains; thence south six and

two-thirds ($6\frac{2}{3}$) chains, thence west six (6) chains, and thence north six and two-thirds ($6\frac{2}{3}$) chains to the place of beginning, containing four (4) acres, more or less.

To have and to hold the said premises, with their appurtenances, unto the said party of the second part, his heirs and assigns forever, and we, the said parties of the first part do hereby covenant to and with the said party of the second part, his heirs and assigns, that we are the owners of said premises, that they are free from all incumbrances, and that we will warrant and defend the same from all lawful claims whatsoever of the said parties of the first part, and them only.

Witness our hands and seals the 1st day of March, A. D. one thousand, eight hundred and eighty-seven.

Witnesses :	WILLIAM B. KELLY, [Seal.]
	MARY M. KELLY. [Seal.]
	JAMES WICKERSHAM,
	FRANK H. GLOYD.

“DEFENDANTS’ EXHIBIT 2, C. B. E.”

Territory of Washington, }
County of Pierce. } ss.

This certifies, that on the 1st day of March, in the year of our Lord one thousand eight hundred and eighty-seven, before me, a probate judge in and for Pierce county, Washington territory, personally appeared the within named William B. Kelly and Mary M. Kelly, whose names are subscribed to the foregoing instrument as parties thereto, personally known to me to be the individuals described in and who executed the within deed, and acknowledged the same to be their free act and deed, and I do further certify that I made known to Mary M. Kelly, wife of said William B. Kelly, the contents of the foregoing instrument and fully appraised her of her rights under the exemption and homestead laws of Washington territory, and of the effect of her signing said deed, and that I examined her separate and apart from her husband, without his hearing, and that upon said separate examination she signed said deed and acknowledged that she voluntarily of her own free will, and without fear of or coercion from her husband, signed and executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal.]

JAMES WICKERSHAM.

Probate Judge in and for Pierce County, Washington Territory.

“ EXHIBIT P.”

ORDINANCE No. 58.

To Prescribe the Time and Manner of Making the Annual Assessment Roll of Taxable Property of the City of New Tacoma.

The common council of New Tacoma does ordain as follows :

Section 1. The time for making the annual assessment of taxable property within the City of New Tacoma for the year eighteen hundred and eighty-two, shall begin on the 31st day of May and shall end on the 15th day of July of said year.

Section 2. The assessment shall be made in the manner prescribed by law for assessing property for territorial and county purposes.

Section 3. The assessor shall make due returns of his assessment roll to the city clerk on or before the 25th day of July of said year.

Section 4. The common council shall meet on the 31st day of July of said year, at 7:30 o'clock P. M., and sit as a board of equalization for the purpose of revising the assessment returns, and may adjourn from time to time until the revision of the assessment roll is completed.

Section 5. The common council sitting as a board of equalization, shall hear and determine any cases that may be brought before it by persons who shall apply in writing to have their assessments revized, either in the listing or valuation of their property, and may also order the assessment of any property, real or personal, to be raised, if, in their judgment, the assessment is too low. Provided that no assessments shall be raised until citation has been

issued by the clerk, upon the order of the board, directing the person to whom the property is assessed to appear before the board within one day from the date of such citation, to show cause why the said assessment shall not be raised. Provided, further, that when application has been made to the board by any one to have his assessment revised, as provided in the first part of this section, the board may increase his assessment without first issuing a citation.

Section 6. When the common council, sitting as a board of equalization, shall complete the revision of the assessment roll, it shall be the duty of the city clerk to make a fair copy of the assessment roll, as revised, in a book provided for the purpose.

Section 7. Before the meeting of the common council as a board of equalization, the city clerk shall cause notice to be given by publication in a newspaper published and in general circulation in the city, stating the time and place of such meeting, the object thereof, and notifying all persons interested to appear before it.

Section 8. The provisions of this ordinance shall apply to the assessment of taxable property for the years after 1882, except that the dates shall be changed as follows: The time for beginning shall be the 1st day of April and the time for closing the same shall be the 10th day of May, and the assessment roll shall be turned over to the city clerk by the 20th day of May of each year. The common council shall sit as a board of equalization on the 30th day of May of each year.

Section 9. Ordinance No. 50 entitled: An Ordinance Concerning the Annual Assessment of the Taxable Property of the City of "New Tacoma," passed May 22d, 1882, is hereby repealed.

Passed and approved June 23, 1882.

Attest: THEO. HOSMER, *Mayor*.
J. H. WILT, *City Clerk*.

I, George Haskin, do hereby certify that I am the city clerk of the City of Tacoma, Pierce county, Washington, and as such, am the custodian of the books containing the ordinances of the late City of "New Tacoma." That the

foregoing is a full, true and correct copy of Ordinance No. 58, of said City of New Tacoma, as shown upon the records of said city.

Witness my hand and the seal of said City of Tacoma, this 17th day of February, 1892.

GEO. HASKIN,
City Clerk.

[Seal.]

“EXHIBIT Q.”

ORDINANCE No. 90.

An Ordinance Levying the Annual Tax for General Municipal Purposes, for the Year, A. D. 1882.

The common council of New Tacoma, does ordain as follows :

SECTION 1. That there is hereby levied on all taxable property, both real, personal and mixed, of the City of New Tacoma, Pierce county, Washington territory, the sum of one-half of one per cent., according to the assessed value thereof as set forth in the assessment roll for the year, A. D. 1882, said tax being the regular annual tax for general municipal purposes, for the year, A. D. 1882.

2. That said tax shall be due and payable to the city treasurer on or before the 31st day of December, A. D. 1882, after which date said tax shall become delinquent.

3. That it shall be the duty of the city clerk, on or before the 1st day of November, 1882, to prepare the annual tax list in accordance with the levy, and deliver the same to the treasurer.

4. That it shall be the duty of the city treasurer, immediately after receiving said tax list from the clerk, to give notice of the same by publication in some newspaper, printed and published in the city, stating in said notice the time said tax will become delinquent.

Passed and approved October 24th, A. D. 1882.

A. S. ABERNETHY, JR.,
Mayor.

Attest :
J. H. WILT, Clerk.

I, George Haskin, do hereby certify that I am the city clerk of the City of Tacoma, Pierce county, Washington, and as such am the custodian of the books containing the ordinances of the late City of "New Tacoma;" that the foregoing is a full, true and correct copy of Ordinance No. 70 of said City of New Tacoma, as shown upon the records of said city.

Witness my hand and the seal of said City of Tacoma, this 17th day of February, A. D. 1892.

GEO. HASKIN, *City Clerk.* [Seal.]

"EXHIBIT R."

SHERIFF'S NOTICE OF DELINQUENT TAX SALE.

Under and by virtue of an act of the legislative assembly of the Territory of Washington, approved November 5, A. D. 1881, I will sell at public auction, to the highest bidder for cash, at the court house door in the City of New Tacoma, for delinquent city taxes for the year 1882, the real estate described in the following list, unless the same shall be redeemed by the persons to whom said real estate is assessed, or their agents.

The sale will commence on Monday, May 7, A. D. 1883, at 10 o'clock A. M., and continue from day to day between the hours of 10 A. M. and 5 P. M., until such real estate shall have been sold or twice offered for sale.

HENRY WINSOR,
Sheriff of Pierce County, Washington Territory.

By L. G. SHELTON,
Deputy Sheriff.

Date of first publication, New Tacoma, April 20, 1883.

Givens, Mary A.—Commencing sixty chains north and six chains east of the northwest corner of section five, township twenty, north range three east of Willamette meridian; thence running east six chains; thence south $6\frac{2}{3}$ chains; thence west six chains; thence north $6\frac{2}{3}$ chains to the place of beginning, four acres..... \$4.78

District of Washington, }
 Western Division. } ss.

I, A. Reeves Ayres, clerk of the Circuit Court of the United States for the Ninth Judicial District of Washington, do hereby certify the foregoing to be a full, true and correct copy of the heading of the advertisement referred to in the said newspaper, in evidence in the said case, and the description referred to, and that the same is the only property in said advertisement purporting to be the property of Mary A. Givens.

Attest my hand and the seal of said circuit court, this 7th day of September, A. D. 1892.

[Seal.]

A. REEVES AYRES, *Clerk.*

“EXHIBIT S.”

ORIGINAL ASSESSMENT ROLL OF NEW TACOMA.

NAME.	DESCRIPTION OF LANDS.	LOT OR SECTION.
<i>Givens, Mary A.</i>	Commencing 60 chains north and 6 chains east of the N. W. corner of Sec. 5, T. 20, N. R. E. of W. M., thence running E. 6 chains, thence S $6\frac{2}{3}$ chains; thence N. $6\frac{2}{3}$ chains to place of beginning, containing 4 acres.	5
BLOCK OR TOWNSHIP.	RANGE.	No. OF ACRES.
20 N.	3 E.	4
Full CASH VALUE OF LAND.	Full CASH VALUE OF IMPROVEMENTS.	
600.		

Ex. S.

C. B. E.

"EXHIBIT T."

DUPLICATE ASSESSMENT ROLL OF NEW TACOMA.

NAME.	DESCRIPTION OF LANDS.	LOT OR SECTION.
<i>Givens, Mary A.</i>	Commencing 60 chains North and 6 chains east S W of the W. M. corner of Sec. 5 T 20 N R 3 E of W. N. thence running E 6 chains ; thence S $6\frac{2}{3}$ chains ; thence W 6 chains ; thence N $6\frac{2}{3}$ chains to the place of beginning, containing 4 acres.	5
BLOCK OR TOWNSHIP.	RANGE.	NUMBER OF ACRES.
20 N	3 E	4
FULL CASH VALUE OF LAND.	FULL CASH VALUE OF IMPROVEMENTS.	
600	C B E	

And this was all the evidence offered and given in the case and the case was accordingly submitted to the court, and afterwards, on the 22d day of June, 1892, the court gave the decision and opinion herein filed.

And, afterwards, on the 23d day of June, 1892, the plaintiff duly filed his motion for a new trial of the said case, which motion was in the words and figures following, viz.:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF WASHINGTON.—WESTERN DIVISION.

F. V. McDONALD,	} Plaintiff,	} Motion for a new trial.
<i>vs.</i>		
DOLPHUS B. HANNAH and	} Defendants.	
KATE E. HANNAH,		

Now comes the plaintiff and moves the court for a new trial of the said case for these :

I.

Insufficiency of the evidence to justify the decision of the court upon the facts.

II.

Insufficiency of the evidence to justify the decision of the court upon the law.

III.

The decision of the court that plaintiff was without title to the demanded premises, is against the law:

For that the deed by Matthews to plaintiff's immediate grantor, Mary A. Givens, under the power of attorney of her husband, vested her with the title to the demanded premises previously held by her husband, James H. Givens, and others.

For that the decree of partition vested plaintiff with all the title in the demanded premises theretofore held by the other parties thereto.

And for that plaintiff's said immediate grantor was the common source of title to the demanded premises.

This motion is made upon the evidence shown by the stenographer's extended notes and the documentary evidence adduced upon the trial of the case, together with the pleadings and proceedings in the case.

W. SCOTT BEEBE and
JOHN C. STALLCUP,

Filed, June 23, 1892.

Attorneys for Plaintiff.

The said motion came duly on for hearing to the court on the 7th day of July, 1892, and upon consideration thereof by the court, was denied, to which ruling and judgment the plaintiff then and there duly excepted.

That thereupon the court gave the findings and judgment against the plaintiff, which appear of record herein, to which the plaintiff then and there duly excepted, and gave notice then and there that he would present his bill of exception and proceed to obtain a review of the said cause by the circuit court of appeals by writ of error, and then and there asked for, and was allowed extension of time in which to prepare and tender his bill of exceptions herein.

Upon reading the foregoing petition, and it appearing therefrom and from the record of said cause that it is a proper cause for the allowance of a writ of error, it is ordered that said motion be granted and that a writ of error be allowed, and that said F. V. McDonald enter into security on said writ of error, as required by law, in the sum of five hundred (\$500.00) dollars.

C. H. HANFORD, *Judge.*

November 29, 1892.

ENDORSEMENT.

Filed November 30, 1892.

A. REEVES AYRES, *Clerk.*

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF WASHINGTON.--WESTERN DIVISION.

<p>F. V. McDONALD,</p> <p style="text-align: right;"><i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>DOLPHUS B. HANNAH and</p> <p>KATE E. HANNAH,</p> <p style="text-align: right;"><i>Defendants.</i></p>	}	<p>Assignment of errors.</p>
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Now comes the plaintiff and presents and files this, his assignment of errors, and says that on the record and proceedings of the above entitled court in the above entitled cause, and also in making and entering the findings and judgment therein against the plaintiff and in favor of defendants, there is manifest error in this, to-wit :

I.

The court erred in its second finding of fact in finding "that the plaintiff is not the owner in fee of, nor has he a right to, nor is he entitled to the possession of the real property" described in the plaintiff's complaint.

II.

That the court erred in its third finding of fact in finding that the defendants' do not wrongfully withhold the premises described in plaintiff's complaint, from the plaintiff.

III.

The court erred in concluding as a matter of law "that judgment should be entered herein dismissing plaintiff's action."

IV.

The court erred in concluding "that plaintiff's action be and the same is hereby dismissed, and that the defendants do have and recover from the plaintiff the costs and disbursements of this action, to be taxed by the clerk."

V.

The court erred in deciding that "Exhibit C," in the bill of exceptions in this case, the same being a decree in partition in the case of *F. V. McDonald vs. John Donaldson and others*, in the circuit court of the United States, for the district of Washington, was not binding upon defendants and was not competent evidence to show title in plaintiff as against defendants, and did not constitute a link in the claim of plaintiff's title to the said real property.

VI.

The court erred in deciding that plaintiff's grantor, Mary A. Givens had no title or interest in the said real property, except dower, and in deciding that the same had not been assigned to her.

VII.

The court erred in deciding that plaintiff's grantor, Mary A. Givens, was not the owner in fee at the date of her conveyance of the said real property to the plaintiff, and in denying plaintiff the benefit of the rule that neither plaintiff nor defendant was at liberty to deny that Mary A. Givens owned said property at the date of said conveyance.

VIII.

The court erred in admitting in evidence a certified copy of an instrument claimed by defendants to be a deed from the Territory of Washington to Wm. B. Kelly; said instrument being a part of the bill of exceptions herein and marked "Exhibit N."

IX.

The court erred in holding and deciding that the said instrument claimed by defendants to be a deed from the Territory of Washington to Wm. B. Kelly, was valid, and in permitting it to be read in evidence, notwithstanding the notice required by statute of the time for redemption had not been given.

X.

The court erred in giving judgment for the defendants and in not giving judgment for the plaintiff to the effect that he was the owner in fee of the said real property and entitled to the possession thereof, and for the recovery thereof.

XI.

Wherefore, the plaintiff, F. V. McDonald, for the reasons assigned, prays that said judgment of the circuit court of the United States, for the district of Washington, be reversed and said court be directed to enter judgment for the plaintiff as prayed in his complaint.

W. SCOTT BEEBE and
JOHN C. STALLCUP,
Attorneys for Plaintiffs.

ENDORSEMENT.

Assignment of errors. Filed November 30th, 1892.

A. REEVES AYERS, *Clerk.*

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF WASHINGTON.—WESTERN DIVISION.

F. V. McDONALD,	}
<i>Plaintiff,</i>	
<i>vs.</i>	}
DOLPHUS B. HANNAH and	
KATE E. HANNAH,	
<i>Defendants.</i>	

KNOW ALL MEN BY THESE PRESENTS: That the above named plaintiffs, F. V. McDonald and G. C. Sawyer, are held and firmly bound unto Dolphus B. Hannah and Kate E. Hannah, the defendants herein, in the full sum of five hundred (\$500) dollars to be paid to the said Dolphus B. Hannah and Kate E. Hannah, their heirs, executors and

administrators, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally, firmly by these presents.

Dated November 30th, 1892.

F. V. McDONALD, [Seal.]
G. C. SAWYER. [Seal.]

The consideration of the above obligation is such that,

WHEREAS: The above named F. V. McDonald has taken a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment rendered in the above entitled action by the Circuit Court of the United States for the District of Washington, in the western division thereof; and said F. V. McDonald is desirous of giving security on said appeal and writ of error for the prosecution thereof, and for costs in accordance with law and the order of this court in that regard made:

Now, therefore, if the above named F. V. McDonald shall prosecute the said writ of error herein to effect, and shall answer all costs if he shall fail to make good his said writ of error, then this obligation shall be void, otherwise to remain in full force and virtue.

F. V. McDONALD,
G. C. SAWYER.

State of Washington, }
County of Pierce. } ss.

G. C. Sawyer, being duly sworn, for himself says: That he is a resident of the State of Washington, and is not an attorney or counsellor-at-law, clerk, sheriff, marshal or other officer of a court of justice; and that he is worth one thousand (\$1,000.00) dollars over and above his just debts and liabilities and property exempt from execution.

G. C. SAWYER.

Subscribed and sworn to before me, this 28th day of November, 1892.
FREDERICK M. HEDGER,
Notary Public for the State of Washington, Residing at Tacoma.

Approved by me November 29, 1892.

C. H. HANFORD, *Judge.*

ENDORSEMENT.

Filed November 30, 1892. A. REEVES AYERS, *Clerk.*

UNITED STATES OF AMERICA, SS.

The President of the United States of America, To the Judges of the Circuit Court of the United States, for the District of Washington, Greeting :

Because in the record and proceeding, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between F. V. McDonald, plaintiff, and Dolphus B. Hannah and Kate E. Hannah, defendants, a manifest error hath happened, to the great damage of the said F. V. McDonald, as by his complaint appears, and it being fit, that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of the appeals for the ninth circuit, together with this writ, so that you have the same at San Francisco, in the State of California, within thirty days from the date hereof, to be there and then held, that the record and proceedings aforesaid be inspected, the said circuit court of appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the Honorable Melville W. Fuller, chief justice of the supreme court of the United States, this 30th day of November, in the year [Seal.] of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States the one hundred and seventeenth.

A. REEVES AYERS,

Clerk of the United States Circuit Court for the District of Washington.

The above writ of error is hereby allowed.

C. H. HANFORD,

District Judge, Presiding in said Circuit Court.

Service of the within writ of error by receipt of a copy thereof, is hereby admitted at Tacoma, State of Washington, this 3d day of December, 1892.

[Signed.]

W. C. SHARPSTEIN,

Attorney for Defendants in Error.

UNITED STATES OF AMERICA, ss.

To Dolphus B. Hannah and Kate E. Hannah, Greeting:

You are hereby cited and admonished to be and appear at the United States circuit court of appeals for the ninth circuit, to be held at the City of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district Washington, western division, wherein F. V. McDonald is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, chief justice of the supreme court of the United States this 30th day of November, A. D. 1892, and of the Independence of the United States, the one hundred and seventeenth.

[Seal.]

C. H. HANFORD,
District Judge Presiding in said Circuit Court.

Service of the within citation by receipt of a copy thereof is hereby admitted at Tacoma, State of Washington, this third day of December, 1892.

[Signed.] W. C. SHARPSTEIN,
Attorney for Defendants in Error.

United States of America, }
District of Washington. } ss.

I, A. Reeves Ayres, clerk of the circuit court of the United States of America for the district of Washington, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages numbered from one to 187 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of F. V. McDonald, plaintiff in error, against Dolphus B. Hannah and Kate E. Hannah, defendants in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the City of Tacoma, in the District of Washington, this 1st day of December, in the year of our Lord
[Seal.] one thousand eight hundred and ninety-two, and of the Independence of the United States the one hundred and seventeenth.

A. REEVES AYRES, *Clerk.*

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